IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

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## No. 6158

DONALD LINDSEY, ET AL.,

*Appellants,*

vs.

DOROTHEA M. NORMET, ET AL.,

*Appellees.*

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APPEAL FROM THE U. S. DISTRICT COURT
FOR THE DISTRICT OF OREGON

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## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | | PROCEEDINGS | |
|---|---|---|---|
| 1970 | | | |
| Jan. | 7 | Filed Complaint | |
| | 7 | Filed pltf's motion for rule to show cause | |
| | 7 | Filed and Entered Order to show cause; January 12, 1970, at 10:00 a.m. | B |
| | 7 | Filed Notice | |
| | 12 | Filed pltf's motion to proceed in forma pauperis | |
| | 12 | Record of hearing on Order to show cause | |
| | 12 | Record of motion for temp restraining order against Judge Wm. C. Beers, Judge, Mult Co., Dist Court, taking action to evict Randall Lowe, pltf | |
| | 12 | ENTERED ORDER denying motion | G |
| | 12 | Record of motion that matter be presented to a three judge Court | |
| | 12 | Entered Order referring matter to a three Judge Court and certification to Chief Judge Ninth Circuit | G |
| | 12 | Record of motion to proceed in forma pauperis | |
| | 12 | Entered Order that motion be held in abeyance | G |
| | 12 | Record of motion for temp restraining order for any action arising out of this case in Mult Co | |
| | 12 | Entered Order staying execution on judgment for five days or until the three judge Court is constituted, and if not constituted within five days, pltf may petition for renewal of restraining order | G |
| | 12 | Entered Order that counsel to put a proper heading and identifying cover on the answer tendered in action in Dist Court Mult Co. | G |

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | | PROCEEDINGS |
|---|---|---|
| 1970 | | |
| Jan. | 12 | Filed pltf's motion for joinder of Honorable William C. Beers, and all persons holding office as Judged of the Dist and Circuit Court of the State of Oregon, as a class |
| | 12 | Filed and Entered Order that Beers and all persons similarly situated are joined; pltfs are granted ten days from date hereof to file an amended complaint G |
| | 12 | Filed pltf Randall Lowe's motion for temporary restraining order against defts, Beers, and all persons in class |
| | 12 | Filed and Entered Order for temp restraining order against Orville G. and Vivian L. Grubb, Honorable Beers, from ordering execution of eviction for a period of five days from date hereof; that this order applies specifically to action at Number 76728 in Dist Court for the State of Oregon, for County of Mult, etc. G |
| | 12 | Filed and Entered Order that temp restraining order granted against William E., John, and Eugene C. Skourtes, also Dorthea N. Normet— pltf Evaret Snyder granted rest order against Frank H. and Eleanor M. Kelley; pltf Keith Oetting is granted rest order against Edith Manning; pltf Randall Lowe is granted rest order against Orville G. and Vivian L. Grubb; pltfs Princess Thomas and Marie Dunne granted rest order against George C. Staples and Bud Specca (See Order) G |
| | 13 | Filed and Entered Order that temp rest order issued on Jan. 12, 1970, is continued in full force and effect until hearing; hearing is to be held on Tuesday, Jan 20, 1970, at 2:00 p.m. in this Court G |

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | PROCEEDINGS | |
|---|---|---|
| 1970 | | |
| Jan. 14 | Filed and Entered Notification and Certificate of Three Judge Court | G |
| 19 | Filed Order designating US. Circuit Judge and United States Dist Judged pursuant to § 2284, Title 28, USC (m1/19/70) | Chambers |
| 20 | Filed pltfs' motion for determination of class action pursuant to Federal Rule of Civil Procedure Number 23 (c) (1) | |
| 21 | Filed Amended Complaint | |
| 21 | Filed Notice to plead | |
| 21 | Filed and Entered Order re temp rest order | G |
| 21 | Filed and Entered Order granting leave to maintain class action, etc. | G |
| 21 | Filed and Entered Order granting pltfs leave to proceed informa pauperis | G |
| 20 | Record of hearing on motion for temp rest order | |
| 20 | Record of pltf's motion to proceed in forma pauperis | |
| 20 | Entered reder allowing motion to proceed without paying costs or security | G |
| 20 | Record of oral motion by Mr. Clough that all judges of the Dist Court be enjoined from entering judgment against all named pltfs in this action | |
| 20 | Entered Order restraining dist Judges from entering judgment or ordering execution on any action brought by the other names defts against the above named pltfs. Pltfs Lindsey, Snyder and Lowes to pay back rent or give security or further rent to Legal Aid who will hold the money in a special Trust Account until deposited funds are paid as ordered by the Court (blotter m 1/22/70) q | G |

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | PROCEEDINGS |
|---|---|
| 1970 | |
| Jan. 26 | Filed interr to defts (delivered copy to Kilkenny, Belloni and Goodwin) |
| 29 | Filed pltfs' request for admissions with three copies; original to calendar clerk copies to Judges Kilkenny, Solomon & Goodwin |
| 30 | Filed Stipulation re facts admitted into evidence (see Stipulation) copies delivered |
| 30 | Filed motion for joinder of persons needed for just adjudication; join Dorothy Drauser (with three copies)—copies distributed |
| 30 | Filed Stipulation of Factsre dismissal as to Orvcille G and Vivian L. Grubb copies delivered |
| Feb. 2 | Filed and Entered Order that defts Orville G. and Vivial L. Grubb be dismissed copies delivered G |
| 2 | Filed and Entered Order that complaint be amended to include Dorothy Drauser, egc. copies delivered G |
| 2 | Filed Notice of Depos; Depos of Josephine Brown will be taken on Friday, 13, Feb. 1970 at 11:14 a.m. at Legal Aid (copies delivered to K, S, G) |
| 10 | Filed and Entered Order that Bonnie L. Colton is granted leave to intervene as a party pltf and that Richard McGowan, et us, Gene W. Rossman, Fred M. Rosenbaum and William Martin are joined as defts pursuant to motion of Bonnie Colton; temp rest order is granted to Bonniel L. Colton against the Honorable William C. Beers, etc. (cert copies delivered to K, S, G) on 2/12/70) G |
| 10 | Filed Motion to intervene as a party pltf and motion for substitution of John Does or joinder of persons needed for just adjudication (cert copies delivered to K, S, G 2/12/70) |

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | | PROCEEDINGS | |
|---|---|---|---|
| 1970 | | | |
| Feb. | 11 | Filed Dorthea M. Normet's motion for extension of time within which to plead to pltfs' amended complaint and answer of request for admissions (copies 2/26/70) | |
| | 13 | Filed Answer to motion for extension of time with three copies (copies delivered this date) | |
| | 10 | Filed pltfs' motion for transcript (copies delivered 2/16/70) | |
| | 10 | Lodged memorandum of law in support of above motion 2/16/70 | |
| | 12 | Filed motion for leave to proceed in forma pauperis-Colton (2/16/70) | |
| | 12 | Filed Colton's demand for jury trial (copies 2/16/70) | |
| | 16 | Filed and Entered Order that Bonnie Colton may proceed in forma pauperis (copies 2/16/70) | G |
| | 16 | Filed and Entered Order that transcripts be made (copies delivered 2/16/70) | G |
| | 20 | Filed Answer to pltfs' request for admission of deft Dorothea M. Normet (copies 2/26/70) | |
| | 24 | Record of hearing on deft's motion for extension of time to answer requests for admissions | |
| | 24 | Filed pltf motion to strike deft Normet's answers' to pltfs' request for admissions | |
| | 24 | Entered Order that defts file answer to complaint by March 2, 1970 | G |
| | 24 | Entered Order denying pltf's motion to strike | G |
| | 24 | Entered Order allowing defts motion for extension of time to answer requests for admission | G |
| | 24 | Entered Order that all testimony will be documentary, etc. | G |

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | PROCEEDINGS |
|---|---|
| 1970 | |
| Feb. 24 | Record of pltf's motion for transcript of proceedings |
| 24 | Entered Order allowing motion for transcript (copies 2/26/70—Blotter) G |
| 24 | Filed authorization for transcript of proceedings at government expense. G |
| March 2 | Filed Motion of deft Dorothea M. Normet for more definite statement (copies delivered 3/5/70) |
| 9 | Filed and Entered Order that defts' motion to extendin time to answer is overruled, and deft allowed until 5:00 p.m. Friday, March 13 to answer, etc. (copies delivered 3/11/70) G |
| 9 | filed answer of Dorothy M. Brauser (copies 3/11/70) |
| 9 | Filed and Entered Order (on stip) that Housing Authority be added and substituted for Rose and Martin (copies delivered 8/11/70) |
| 9 | Filed Stipulation that defts Housing Authority and Gene W. Rossman have to and including April 9 to answer GRANTED (copies delivered 3/11/70) |
| 11 | Filed Motion to strike answer of dorothy m. brauser (copies 3/12/70) |
| 11 | Filed Motion for joinder of persons needed for just adjudiciation copies (3/12/70) |
| 11 | Filed and Entered Order that Timmons, Steinbachs & Hartman be joined as defts (3/12/70) G |
| 11 | Entered Order setting for ptc Monday April 20 at 10:00 a.m. (3/10/70) G |
| 13 | Filed Answer of deft Dorothea M. Normet to pltfs' amended complaint (copies 3/16/70) |
| 17 | Filed motion to dismiss |

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | PROCEEDINGS |
|---|---|
| 1970 | |
| March 19 | Filed defts Housing Authority of Portland and Gen Rossman's motion to revoke temp rest order |
| 23 | Filed/Stipulation that argument on defts' motion to dismiss be continued generally until' either counsel requests the Clerk to set same G |
| 23 | Entered Order setting hearing on motion for revocation of temp rest order in Bonnie Colton case for Monday, April 13, 1970, at 9:30 a.m. G |
| 24 | Filed answer in opposition to defts' motion to revoke temp rest order (copies delivered t . . . |
| 25 | Filed Notice of depos of Gene Rossman (copies delivered this date) |
| 26 | Filed Notice of depos of Bonnie L. Colton (copies delivered) |
| April 7 | Filed Order of dismissal that pltfs Princess Thomas and Marie Dunne have removed from the premises they occupies with Brauser, and this matter is now moot, and cause is dismissed with prejudice against Bruaswer; attys for pltf Thomas and Dunne turn over forthwith to deft Brauswer of her atty such monies which pltfs attys deliver) hold on deposit on their behalf Om4/7/70) G |
| 7 | Filed Affidavit of Martin |
| 7 | Filed Answer of housing authority of portland, oregon, and gene w. rossman COPIES D. |
| 8 | Filed Certification of service of Pto COPIES D. |
| 10 | Filed Notice of deposition (copies delivered) |
| 13 | Record of hearing on motion for pevocation of Temp Rest Order |
| 13 | Entered Order continuing case until matter determined by State Court Proceedings G |

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | PROCEEDINGS |
|---|---|
| 1970 | |
| April 17 | Filed Deposition of Mrs. F. Clair (Josephine) Brown. |
| 20 | Filed and Entered Order revoking Restraining Order pertaining to Bonnie L. Colton (M4/21/70) G |
| 28 | Filed Reporter's transcript of Proceedings dated April 13, 1970 |
| 11 | RE Entered Order resetting Trial June 18, 1970, at 9:30 a.m. S |
| 13 | Filed Pltf's Brief with three copies (delivered copies this date) |
| June 1 | Filed Brief of Deft Dorothea M. Normet with three copies (delivered this date) |
| 5 | Lodged Pltfs' Reply Brief (delivered copies this date) |
| 8 | Filed Deft's Supplemental Memorandum of Law by The Honorable William C. Beers, etc. with Order by Judge Goodwin attached permitting filing (copies delivered 6/17/70) Rec'vd at docket desk 6-17-70 |
| 17 | Lodged Pretrial Order (copies delivered per C. Mundorff; also to make changes) |
| 18 | Record of Three-Judge Court Trial |
| 18 | Filed and Entered Pretrial Order B |
| 18 | Entered Order taking UNDER ADVISEMENT K, S, G |
| July 1 | Filed Joint Motion for Settlement and Dismissal of defts Donald Dale Timmons, Howard D. Steinbach and his wife, Marion Steinbach, and Stanley E. Hartman, individually and in Their capacities as officers and/or agents of the Belmont East Corp. (copies delivered 7/1/70) |

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| DATE | | PROCEEDINGS |
|---|---|---|
| 1970 | | |
| July | 1 | Filed and Entered Order that defts Donald Dale Timmons, Howard D. Steinbach and his wife Marion Steinbach, and Stanley E. Hartman, individually, and in their capacities as officers and or agents of the Belmont East Corporat, are dismissed (copies delivered 7/1/70) G |
| Sept | 10 | Filed and Entered Opinion that defts have judgment for their costs and disbursements; Temporary Restraining Order is vacated and the escrow is ordered to distribute all rentals to the appropriate persons and close the escrow (M9/9/70) K |
| | 10 | Filed and Entered Judgment DISMISSING (m9/9/70) K, S, G |
| | 14 | Filed and entered order permitting appeal in forma pauperis. G |
| | 14 | Filed notice of appeal by plaintiffs. Counsel notified. |
| | 15 | Filed Cost Bill |
| | 18 | Filed Objections to Bill of Costs and Motion to Strike Bill of Costs (with three copies) |
| Oct | 7 | Filed and entered order to proceed in forma pauperis and transcript at government expense G |
| | 7 | Filed designation of record on appeal |
| | 12 | Filed AO Form 207 authorization for transcript at government expense G |
| Nov | 10 | Mailed Certified clerk's record (original pleadings &; all exhibits) to Supreme Court of the United States. Counsel notified. |
| Dec | 14 | Filed reporter's transcript of proceedings of June 18, 1970 |

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF OREGON**

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, KEITH L. OETTING, RANDALL LOWE, MARJORIE LOWE, PRINCESS THOMAS, MARIE DUNNE, and all other persons similarly situated, PLAINTIFFS

*vs.*

WILLIAM E. SKOURTES, JOHN SKOURTES, EUGENE C. SKOURTES, DORTHEA M. NORMET; FRANK H. KELLEY, ELEANOR M. KELLEY; EDITH MANNING, individually and in her capacity as Secretary-Treasurer of ALUMINUM WINDOW PRODUCTS COMPANY, an Oregon corporation; ORVILLE G. GRUBB, VIVIAN L. GRUBB; GEORGE C. STAPLES, individually and in his capacity as owner

and Secretary of AAA HEATING AND COOLING, INC., an Oregon corporation; BUD SPEZZA, individually and in his capacity as President of AAA HEATING AND COOLING, INC., an Oregon corporation; THE HONORABLE WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah; ALL PERSONS SIMILARLY SITUATED, HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH; and JOHN DOES I through XXX, DEFENDANTS

PLAINTIFFS' AMENDED COMPLAINT—
Filed January 21, 1970

## COMPLAINT

### I.

1. This is a civil action on behalf of the individual Plaintiffs and all other persons similarly situated for a declaratory judgment of the unconstitutionality of Oregon Revised Statute Sections 105.105, et seq., which provides for actions of Forcible Entry and Wrongful Detainer, which procedure is in violation of Plaintiffs' constitutional rights, and for a temporary restraining order, a preliminary and permanent injunction against the continued use of the objectionable statutory provisions.

2. The jurisdiction of this Court is involved pursuant to 28 USCA Sections 1343, 2201, and 2202; and 42 USCA Section 1983.

3. Application is hereby made for the convening of a three-judge Federal District Court to hear and determine this matter pursuant to 28 USCA Sections 2281 and 2284.

### II.

4. The Plaintiffs are:

(a) DONALD LINDSEY and EDNA LINDSEY, husband and wife, individuals who are citizens of the

United States and of the State of Oregon, with their residence at 3732 S. E. Grant Court, City of Portland, County of Multnomah, State of Oregon;

(b) EVARET SNYDER, an individual who is a citizen of the United States and of the State of Oregon, with his residence at Apartment 3, 1224 S. E. Belmont, City of Portland, County of Multnomah, State of Oregon;

(c) KEITH L. OETTING, an individual who is a citizen of the United States and of the State of Oregon, with his residence at 849 S. E. 151st Avenue, County of Multnomah, State of Oregon;

(d) RANDALL LOWE and MARJORIE LOWE, husband and wife, who are citizens of the United States and of the State of Oregon, with their residence at 3822 N. E. 66th Avenue, City of Portland, County of Multnomah, State of Oregon;

(e) PRINCESS THOMAS and MARIE DUNNE, individuals who are citizens of the United States and of the State of Oregon, with their residence at Apartment 6, 2412 N. E. Union Avenue, City of Portland, County of Multnomah, State of Oregon;

(f) All other persons, resident in the State of Oregon, whose rights are, have been, or will be affected by the operation of Oregon Revised Statute Sections 105.105, et seq.

5. This is a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class is all those residents of Oregon who are, or have been, or will be, affected by the operation of Oregon Revised Statute Sections 105.105, et seq.

6. The class is so numerous that joinder of all members in this action is impracticable.

7. There are questions of law or fact common to the class.

8. The claims of DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, KEITH L. OETTING, RANDALL LOWE, MARJORIE LOWE, PRINCESS THOMAS, and MARIE DUNNE, are typical of the claims of the class.

9. DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, KEITH L. OETTING, RANDALL LOWE, MARJORIE LOWE, PRINCESS THOMAS, and MARIE DUNNE, and their attorneys, will fairly and adequately protect the interests of the class.

10. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendants in this case.

11. The prosecution of separate actions by individual members of the class would further create a risk of adjudications with respect to individual members of this class which would as a practical matter be dispositive of the interest of other members of the class not parties to the adjudication.

12. The Defendants in this case have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

13. Questions of law or fact common to the members of the class as a whole predominate over any questions affecting only individual members, and the class action is superior to other available methods for the fair and effecient adjudication of this controversy.

III.

14. The Defendants, WILLIAM E. SKOURTES, JOHN SKOURTES, EUGENE C. SKOURTES and DORTHEA M. NORMET, are the equitable and legal title holders of the property located at 3732 S. E. Grant Court, City of Portland, County of Multnomah, State of Oregon, and as such, they, or any one of them, are or are in the position of being, the landlords of the Plaintiff-Tenants, DONALD LINDSEY and EDNA LINDSEY, and they or their agents, servants or employees have threatened to institute an action of Forcible Entry and Wrongful Detainer pursuant to Oregon Revised Statute Sections 105.105, et seq., to evict said Plaintiff-Tenants.

15. The Defendants, FRANK H. KELLEY and ELEANOR M. KELLEY, are the owners of the property located at 1224 S. E. Belmont, City of Portland, County of Multnomah, State of Oregon, and as such they are, or are in the position of being, the landlords of the Plaintiff-Tenant, EVARET SNYDER, and they or their agents, servants or employees, have threatened to institute an action of Forcible Entry and Wrongful Detainer pursuant to Oregon Revised Statute, Sections 105.105, et seq., to evict said Plaintiff-Tenant.

16. The Defendant, EDITH MANNING, in her capacity as Secretary-Treasurer of the ALUMINUM WINDOW PRODUCTS COMPANY, an Oregon corporation, with its principal place of business in the City of Portland, County of Multnomah, State of Oregon, has executed a complaint initiating an action of Forcible Entry and Wrongful Detainer pursuant to Oregon Revised Statute, Sections 105.105, et seq., against Plaintiff, KEITH L. OETTING, in the District Court of the State of Oregon for the County of Multnomah, at No. 75743.

17. The Defendants, ORVILLE G. GRUBB and VIVIAN L. GRUBB, are the owners of the property located at 3822 N. E. 66th Avenue, City of Portland, County of Multnomah, State of Oregon, and as such are in the position of being the landlords of the Plaintiff-Tenant, RANDALL LOWE, and they or their agents, servants, or employees, have instituted an action of Forcible Entry and Wrongful Detainer pursuant to Oregon Revised Statute, Sections 105.105, et seq., to evict said Plaintiff-Tenant at No. 76728 in the District Court of the State of Oregon for the County of Multnomah.

18. The Defendants, GEORGE C. STAPLES, individually, and in his capacity as owner and Secretary of AAA HEATING AND COOLING INC., an Oregon corporation, and BUD SPEZZA, individually, and in his capacity as President of AAA HEATING AND COOLING, INC., an Oregon corporation, through the corporation of which they are officers and in which they have an interest, have control of property owned by AAA HEATING AND COOLING, INC., an Oregon corporation, and located at 2412 N. E. Union Avenue, City of

Portland, County of Multnomah, State of Oregon, and as such are, or are in the position of being, the landlord, individually or through their agent, servant, manager, or employee, of the Plaintiff-Tenants PRINCESS THOMAS and MARIE DUNNE, and they, through their agents, servant, manager or employees, have threatened to institute an action of Forcible Entry and Wrongful Detainer pursuant to Oregon Revised Statute, Sections 105.105, et seq., to evict said Plaintiff-Tenants.

19. The Defendants, WILLIAM E. SKOURTES, JOHN SKOURTES, EUGENE C. SKOURTES, FRANK H. KELLEY, ELEANOR M. KELLEY, ORVILLE G. GRUBB, VIVIAN L. GRUBB, and GEORGE C. STAPLES, are the owners of other property held for rental income purposes and whose tenants may be subject to actions of Forcible Entry and Wrongful Detainer pursuant to Oregon Revised Statute, Sections 105.105, et seq., and who are, have been, or may be, members of the class of Plaintiffs as defined by Paragraph 4. (g) of this Complaint.

20. Defendant, WILLIAM C. BEERS, is a duly elected State official whose duty and function is to uphold and construe the laws of the State of Oregon, in particular Oregon Revised Statute, Sections 105.105, et seq., and further to hear and decide cases and issues raised by party litigants in lawsuits brought pursuant to said Statute.

Defendant, WILLIAM C. BEERS, in his capacity as District Court Judge of the State of Oregon for the County of Multnomah, has before him for consideration the case captioned ORVILLE G. GRUBB and VIVIAN GRUBB, husband and wife, Plaintiffs, vs. RANDALL LOWE and JANE DOE LOWE, husband and wife, Defandants, at No. 76728 of said Court; which case is one brought pursuant to Oregon Revised Statute, Sections 105.105, et seq.

At the hearing held on Monday, January 12, 1970, at 2:30 PM before said Defendant, WILLIAM C. BEERS, said Judge struck all of the affirmative defenses raised by RANDALL LOWE and MARJORIE LOWE and entered judgment for the Plaintiffs.

21. Said named Defendant, WILLIAM C. BEERS, is representative of all Judges of the District Court of the State of Oregon for the County of Multnomah joined hereby as a class of Defendants.

(a) Said class of Defendants are persons whose identity may be readily ascertained although to specifically name and join each one would render pleadings and management of the lawsuit unweildy, burdensome and impracticable.

(b) There are questions of law or fact common to the class, and the claim of Plaintiff, RANDALL LOWE, against the class of Defendants is typical of the claims of the class of Plaintiffs against the class of Defendants.

(c) The defenses of the representative party are typical of the defenses of the class, and the representative party would fairly and adequately protect the interests of the class.

(d) The class action is superior to other available methods for the fair and efficient adjudication of this controversy.

(e) Said class of Defendants are the sole persons who hear and determine lawsuits brought pursuant to Oregon Revised Statute, Sections 105.105, et seq.

22. The Defendants, John Does I through X, inclusive, represent and are any other persons who are officers, agents, servants, employees, managers, or assignees, of any of the named Defendants as defined in Paragraphs 14 through 20, inclusive, of this Complaint, who have the ability to pursue any action against any of the named Plaintiffs, for Forcible Entry and Wrongful Detainer pursuant to Oregon Revised Statute, Sections 105.105, et seq.

23. The Defendants, John Does XI through XX, inclusive, represent and are any persons who are officers, agents, servants, managers, or employees, of any groups, organizations, associations, or societies, whose members include persons named, or to be named, as Defendants in this action and whose membership qualifications include, in part, the ownership or management of real

property used for the purpose of leasing or renting such real property to individual tenants who are, have been, or will be members of the class of persons as defined in Paragraph 4 (g) of this Complaint.

24. The Defendants, John Does XXI through XXX, inclusive, represent and are any persons acting on their own behalf or acting as officers, agents, servants, or employees of any individual, partnership, business, corporation, or other business entity who are, or will be, utilizing the provisions of Oregon Revised Statute, Sections 105.105, et seq., against any individual tenants who are, have been, or will be members of the class of persons as defined in Paragraph 4 (g) of this Complaint.

25. As soon as practicable after the specific identity of any of the Defendants John Does I through XXX are ascertained, they will be properly identified by motion and process served and, where necessary, the appropriate party Plaintiff will be interpleaded as a Plaintiff in this action.

## IV.

26. Oregon Revised Statute, Sections 105.105, et seq., reads as follows:

> 105.105 Entry to be lawful and peaceable only. No person shall enter upon any land, tenement or other real property unless the right of entry is given by law. When the right of entry is given by law the entry shall be made in a peaceable manner and without force.
>
> 105.110 Action for forcible entry or wrongful detainer. When a forcible entry is made upon any premises, or when an entry is made in a peaceable manner and possession is held by force, the person entitled to the premises may maintain in the county where the property is situated an action to recover the possession thereof in the circuit court, district court or before any justice of the peace of the county.
>
> 105.115 Causes of unlawful holding by force. The following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

(1) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after it is due under the lease or agreement under which he holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.

(2) When the lease by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month, or years to year, and remains in possession after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant of the lease or is holding possession without any written lease or agreement.

105.120 Notice is necessary to maintain action in certain cases; waiver of notice; effect of advance payments of rent. (1) An action for the recovery of the possession of the premises may be maintained in cases provided in subsection (2) of ORS 105.115, when the notice to terminate the tenancy or to quit has been served upon the tenant or person in possession in the manner perscribed by ORS 91.110 and for the period prescribed by ORS 91.060 to 91.080 before the commencement of the action, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for a period of 90 days before the commencement of the action.

(2) Any person entering into the possession of real estate under written lease as the tenant of another may, by the terms of his lease, waive the giving of any notice required by this section.

(3) The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against him for the possession of premises before the expiration of any period for which the tenant or person has paid the rent of the premises in advance.

105.125 Complaint. In an action pursuant to ORS 105.110 it is sufficient to state in the complaint:

(1) A description of the premises with convenient certainty;

(2) That the defendant is in possession of the premises;

(3) That he entered upon the premises with force or unlawfully holds the premises with force; and

(4) That the plaintiff is entitled to the possession of the premises.

105.130 How action conducted. Except as provided in ORS 105.135 to 105.160 an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of this state.

105.135 Service and return of summons. The summons shall be served and returned as in other actions. The service shall be not less than two or more than four days before the day of trial appointed by the court.

105.140 Continuance. No continuance shall be granted for a longer period than two days unless the defendant applying therefor gives an undertaking to the adverse party with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if judgment is rendered against the defendant.

105.145 Judgment on trial by court. If the action is tried by the court without a jury, and after hearing the evidence it concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable.

**105.150 Verdict and judgment on trial by jury.** If the action is tried by a jury and they find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, they shall render a general verdict of not guilty; if true in part, they shall render a verdict setting forth the facts they find, and the court shall render judgment according to the verdict.

**105.155 Form of execution.** The execution, should judgment of restitution be rendered, may be in the following form:

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STATE OF OREGON )
) ss
COUNTY OF _____ )

To the sheriff or any constable of the county:

Whereas, a certain action for the forcible entry and detention, (or the forcible detention) of the following described premises, to wit: _____ _____, lately tried before the above entitled court, wherein _____ was plaintiff and _____ was defendant, judgment was rendered on the _____ day of _____, A.D., _____, that the Plaintiff _____ have restitution of the premises, and also that he recover the costs and disbursements in the sum of $_____;

In the name of the State of Oregon, you are, therefore, hereby commanded to cause the defendant and his goods and chattels to be forthwith removed from the premises and the plaintiff is to have restitution of the same. In the event the goods and chattels are not promptly removed thereafter by the defendant you are authorized and empowered to cause the same to be removed to a safe place for storage. You are also commanded to levy on the goods and chattels of the defendant, and make the

costs and disbursements, aforesaid, and all accruing costs, and to make legal service and due return of this writ.

Witness my hand and official seal (if issued out of a court of record) this _____ day of _____, A.D., _____.

Justice of the peace, or clerk of the district or circuit court.

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105.160 Additional undertaking on appeal. If judgment is rendered against the defendant for the restitution of the real property described in the complaint, or any part thereof, no appeal shall be taken by the defendant from the judgment until he gives, in addition to the undertaking now required by law upon appeal, an undertaking to the adverse party, with two sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff if the judgment is affirmed on appeal of twice the rental value of the real property of which restitution is adjudged from the commencement of the action in which the judgment was rendered until final judgment in the action.

105.165 to 105.200 (Reserved for expansion.)

V.

27. The provisions of Oregon Revised Statute, Sections 105.105, et seq., were enacted and continue to exist in contravention to the United States Constitution and the Constitution of the State of Oregon in the following particulars:

(a) Section 105.125 (3) and (4) does not require the plaintiff in an action for Forcible Entry and Wrongful Detainer to allege facts supporting his cause of action with particularity to enable the defendant to have sufficient notice of plaintiff's grounds and rights to which

he may respond and these provisions are violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon, and further, are violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and,

(b) Section 105.135 does not provide adequate time for that defendant to investigate, obtain counsel, or prepare a defense to an action for Forcible Entry and Wrongful Detainer and this provision is violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and further is violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and,

(c) Section 105.140 permits only a two-day continuance without payment of money as security which provision is violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and further is violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and,

(d) Sections 105.145 and 105.150 do not permit that defendant to raise other equiable and meritorious substantive defenses to the action for Forcible Entry and Wrongful Detainer such as illegality of contract for plaintiff's violation of Housing Codes or plaintiff's breach of warranty that the property is habitable or fit for the particular purpose intended, etcetera, and said provisions

are violative of that defendant's right to due process of law as guaranteed by the fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and further is violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and,

(e) Section 105.115 defines the causes of unlawful holding by the defendant and leaves no latitude to include other equitable and meritorious substantive justifications for holding the property in question, such as those given as examples in sub-part (d) of this paragraph, and said provisions are violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of tht Constitution of the State of Oregon and further is violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and,

(f) Section 105.160 provides that if judgment is rendered against the defendant, he must post money or security to protect his rights in an appeal, which provision is violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and,

(g) Sections 105.105, et seq., provide for a summary disposition in a procedure that is unbalanced and weighted in favor of one party, to wit: the plaintiff, and as such is violative of the defendant's right to due process of the law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and further is violative of the defendant's right to equal privileges and immunities and equal pro-

tection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon.

VI.

28. The Plaintiffs, DONALD LINDSEY and EDNA LINDSEY, are tenants in a dwelling that has been declared substandard by the Bureau of Buildings of the City of Portland and, to date, no attempt at repairs has been made by the Defendant-Landlords, and said Defendant-Landlords have threatened the eviction of said Plaintiffs. For their cause of action, said Plaintiffs set forth the following:

(a) As previously more fully set forth herein, the eviction procedure is unconstitutional and void;

(b) That said Defendant-Landlords have a duty to repair the Housing Code violations, and maintain the premises in a habitable condition;

(c) That said Defendant-Landlords have a duty to refrain from taking retaliatory measures against said Plaintiffs as a result of this action or as a result of reporting Housing Code violations or as a result of Plaintiffs withholding rent to compel the Defendant-Landlords to repair the premises.

29. The Plaintiff, EVARET SNYDER, is a tenant in a multiple dwelling, in whose apartment there exists conditions in violation of the Housing Code of the City of Portland which said Plaintiff has requested repair by the Defendant-Landlords and which said Defendant-Landlords have failed, or otherwise refused, to repair and said Defendant-Landlords have threatened said Plaintiff's eviction. For his cause of action, said Plaintiff sets forth the following:

(a) As previously more fully set forth herein, the eviction procedure is unconstitutional and void;

(b) That said Defendant-Landlords have a duty to repair the Housing Code violations, and maintain the premises in a habitable condition;

(c) That said Defendant-Landlords have a duty to refrain from taking retaliatory measures against said Plaintiff as a result of this action or as a result of reporting Housing Code violations or as a result of Plaintiff's withholding rent to compel the Defendant-Landlords to repair the premises.

30. The Plaintiff, KEITH L. OETTING, is a tenant in a dwelling in which there exists conditions in violation of the Building and Health Codes of the County of Multnomah, which said Plaintiff has requested repair by the Defendant-Landlord and which said Defendant-Landlord has failed or otherwise refused to repair and said Defendant-Landlord has instituted an action of Forcible Entry and Wrongful Detainer pursuant to Oregon Revised Statute Sections 105.105, et seq., in the District Court of the State of Oregon for the County of Multnomah at No. 75743. For his cause of action, said Plaintiff sets forth the following:

(a) As previously more fully set forth herein, the eviction procedure is unconstitutional and void;

(b) At the hearing before the Honorable District Court Judge Shoemaker, said Plaintiff was prevented from asserting the defenses of unconstitutionality of the State procedure, ORS § 105.105, et seq., and the defenses of illegality of contract, breach of warranties of fitness and habitability, failure of consideration, breach of covenants of quiet enjoyment, plaintiff-landlord's unclean hands, and public policy as absolute defense to the eviction proceeding;

(c) That said Defendant-Landlord has a duty to repair the Housing Code violations, and maintain the premises in a habitable condition;

(d) That said Defendant-Landlords have a duty to refrain from taking retaliatory measures against said Plaintiff as a result of this action, or as a result of reporting Housing Code violations, or as a result of Plaintiff withholding rent to compel the Defendant-Landlords to repair the premises.

31. The Plaintiffs, RANDALL LOWE and MARJORIE LOWE, tenants in a dwelling in whose apartment

there exists conditions in violation of the Housing Code of the City of Portland, which said Plaintiffs have requested repair by the Defendant-Landlords and which said Defendant-Landlords have failed or otherwise refused to repair and said Defendant-Landlords have threatened said Plaintiffs' eviction. For their causes of action, said Plaintiffs set forth the following:

(a) As previously more fully set forth herein, the eviction procedure is unconstitutional and void;

(b) That said Defendant-Landlords have a duty to repair the Housing Code violations, and maintain the premises in a habitable condition;

(c) That said Defendant-Landlords have a duty to refrain from taking retaliatory measures against said Plaintiff as a result of this action or as a result of reporting Housing Code violations or as a result of Plaintiffs' withholding rent to compel the Defendant-Landlords to repair the premises.

(d) That said Defendant WILLIAM C. BEERS, had a duty to permit them to raise these various equitable and meritorious defenses at the State Court action.

32. The Plaintiffs, PRINCESS THOMAS and MARIE DUNNE, are tenants in a multiple dwelling and have been told by Dorothy Brauser, manager and agent of said Defendant-Landlords, to vacate the premises or face eviction proceedings because they are presently on welfare and they refused to divulge the details of their welfare grants to said manager. For their causes of action, said Plaintiffs set forth the following:

(a) As previously more fully set forth herein, the eviction procedure is unconstitutional and void;

(b) That said Defendant-Landlords have a duty to refrain from evicting said Plaintiffs because said Plaintiffs exercised a constitutional right in applying for welfare payments;

(c) That said Defendant-Landlords have no right to compel the divulgence of confidential and privileged information by threatening eviction or, in fact, evicting said Plaintiff-Tenants from their residence.

## VII.

33. There exists in the County of Multnomah, State of Oregon, a shortage of housing, in particular low-cost housing for low-income families.

34. The condition of many available low-cost housing units is substandard and/or in violation of the Housing Codes of the City of Portland and County of Multnomah.

35. By virtue of the existence of a shortage of housing, the landlords are in the position of dictating the terms of rental agreements and compelling prospective tenants to accept adhesion leases and substandard conditions which, under these conditions, the landlord is not inclined to repair.

36. To compel low-income persons, or any individual, to accept such substandard conditions by virtue of the inaction of the courts and the Bureau of Buildings in compelling landlords to repair substandard conditions is a violation of the Plaintiffs' constitutional rights in that;

(a) it deprives them of property without due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Oregon Constitution;

(b) it deprives them of equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Oregon Constitution;

(c) it deprives them of equal privileges and immunities as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I Section 20 of the Oregon Constitution.

## VIII.

37. Said Defendants, WILLIAM C. BEERS and all persons similarly situated holding office as Judges of the District Court of the State of Oregon for the County of Multnomah, by deciding lawsuits pursuant to Oregon Revised Statute Sections 105.105, et seq., have violated and are continuing to violate the Plaintiffs' civil rights and are acting in contravention to the Constitution of

the United States and of the State of Oregon as outlined in Paragraph 27 of this Complaint.

IX.

38. The Plaintiffs are persons of low income means.

39. The Plaintiffs would have difficulty in relocating to new dwellings.

40. The cost of moving and relocating is burdensome and oppressive to these Plaintiffs.

41. Even if Plaintiffs are eligible for public housing, there is approximately a six to eight months waiting period before such housing is available in the City of Portland.

42. The Plaintiffs would be caused irreparable harm if compelled to relocate at this time.

43. The Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray for relief that:

(a) This Court convene a three-judge District Court as required by 28 USCA, Sections 2281 to 2284;

(b) This Court declare Oregon Revised Statute Sections 105.105, et seq., unconstitutional and void;

(c) This Court declare that proceedings instituted pursuant to the procedures of Oregon Revised Statute Sections 105.105, et seq., are unconstitutional and void;

(d) This Court declare Oregon Revised Statute Sections 105.115, 105.125 (3) and (4), 105.135, 105.140, 105.145, 105.150, and 105.160, unconstitutional and void;

(e) This Court declare that for an action of Forcible Entry and Wrongful Detainer to be constitutional and enforceable, it must permit sufficient time prior to the hearing within which the defendant may investigate, obtain counsel, and prepare a defense to such action for Forcible Entry and Wrongful Detainer;

(f) This Court declare that for an action of Forcible Entry and Wrongful Detainer to be constitutional and enforceable, it must permit the raising of any substantive meritorious defenses and due consideration given thereof by the State Court with specific rulings thereon, any of which defenses may be an absolute defense to the action of Forcible Entry and Wrongful Detainer;

(g) This Court declare that for the undertaking requirement for obtaining continuances beyond the time as set by Paragraph (e) to be constitutional and valid, it shall be limited to and in no event, greater than the payment of the current monthly rent or term of rent due, into the Court to be held in escrow until all matters be determined by a full and fair hearing;

(h) This Court declare that for the undertaking requirement or bond for appealing the lower court determination to be constitutional and valid; it shall be limited to and in no event greater than the payment of the rents declared due by the lower court to be held in escrow until the appeals are determined;

(i) This Court declare that any action for Forcible Entry and Wrongful Detainer which does not comply with the requirements of Paragraphs e, f, g, and h of Plaintiffs' prayer for relief shall be unconstitutional and void and, therefore, unencorceable;

(j) This Court declare that the Defendant-Landlords have a duty to repair any housing code violations that exist in any of the premises described herein and a further duty to maintain the premises in a habitable condition;

(k) That this Court declare that a landlord who wrongfully or negligently permits his property to be in violation of housing and sanitary code standards has violated the constitutional rights of the tenant;

(l) That if the landlord refuses to repair said housing and sanitary code violations or negligently permits their continued existence, the landlord may be liable for a tort action by the tenant to said tenant for damages;

(m) This Court declare that a tenant has the right to exercise or attempt to exercise constitutional rights or statutory rights without fear of being evicted from his dwelling because of his exercise of those rights;

(n) This Court declare that Defendants WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah, and all persons similarly situated holding office as Judges of the District Court for the State of

Oregon, have a duty to hear actions brought pursuant to Oregon Revised Statute Sections 105.105, et seq., in accordance with Paragraphs (e) through (i) of this prayer for relief;

(o) This Court grant a temporary restraining order against each of said Defendants, restraining them from taking any action for possession of the premises or pursuing any action already instituted to obtain possession of the premises pursuant to their individual factual situations;

(p) This Court grant a preliminary injunction and, thereafter, a permanent injunction against said Defendants, enjoining them from utilizing the provisions of Oregon Revised Statute Sections 105.105, et seq., against the named Plaintiffs to this action;

(q) This Court grant any further relief as may be necessary and proper.

LEGAL AID SERVICE

By: /s/ John H. Clough, Esquire
Director,
Trial & Appellate Div.

/s/ Charles J. Merten, Esquire
Director, Legal Aid Service

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JOSEPH C. MOREHEAD, Esquire

/s/ Kenneth J. Keller, Esquire

/s/ Mervyn H. Loya, Esquire
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, ET AL., PLAINTIFFS
*vs.*
WILLIAM E. SKOURTES, ET AL., DEFENDANTS

MOTION FOR DETERMINATION OF CLASS ACTION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE NUMBER 23 (c) (1)—Filed January 20, 1970

Plaintiffs move that pursuant to Federal Rule of Civil Procedure Number 23 (c) (1) this Court enter an Order determining that this suit shall be maintained as a class action on behalf of themselves and all persons similarly situated who are, have been, or will be affected by the operation of Oregon Revised Statute, Sections 105.105, et seq., on the grounds that it appears from their Complaint on file herein and their testimony in support of their motions for temporary restraining orders and application for leave to proceed in forma pauperis that they meet the requirements of Federal Rules of Civil Procedure Numbers 23 (a) and 23 (b) (1 & 2).

Plaintiffs further move that this Court define the class as all those persons in the State of Oregon who are, have been, or will be, affected by the operation of Oregon Revised Statute, Sections 105.105, et seq.

LEGAL AID SERVICE

By: /s/ John H. Clough
JOHN H. CLOUGH, Esquire
Director,
Trial & Appellate Division

## POINTS AND AUTHORITIES

Wright, "Class Actions", 47 FRD 169 (1969)

*Cypress* v. *Newport News General Hospital*, C A 4th 1967, 375 F 2d 648

*Illinois* v. *Harper & Row Publishers, Inc.*, D C Ill. 1969, 301 F Supp. 484

*Eisen* v. *Carlisle & Jacquelin, et al*, CA 2nd 1968, 391 F.2d 555

*Norwalk CORE* v. *Norwalk Redevelopment Agency*, CA 2nd 1968, 395 F 2d 920

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, ET AL., PLAINTIFFS

*vs.*

WILLIAM E. SKOURTES, ET AL., DEFENDANTS

ORDER OF COURT—Filed January 21, 1970

AND NOW, to wit, this 20th day of January, 1970, upon consideration of the Plaintiffs' Motion for Determination of class action, and upon hearing arguments of counsel, it is specifically found that on the face of the pleadings and from the offers of proof of counsel and arguments thereon, that the proposed class of Plaintiffs meet the requirements of Federal Rule of Civil Procedure Numbers 23 (a) and 23 (b) (1 & 2) for the maintenance of a class action.

IT IS HEREBY ORDERED that the Plaintiffs are granted leave to maintain this action as a class action pursuant to Federal Rules of Civil Procedure Numbers 23 (a) and 23 (b) (1 & 2). The class is hereby defined as all those persons in the State of Oregon who are, have been, or may be affected by the operation of Oregon Revised Statute, Sections 105.105, et seq.

This ORDER is to remain in full force and effect unless the full court modifies or amends this ORDER.

BY THE COURT

/s/ Alfred T. Goodwin
Judge

PRESENTED BY:

/s/ John H. Clough
JOHN H. CLOUGH, Esquire

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, ET AL., PLAINTIFFS

*vs.*

WILLIAM E. SKOURTES, ET AL., DEFENDANTS

ORDER OF COURT—Filed January 21, 1970

AND NOW, to wit, this 20th day of January, 1970, upon consideration of the Plaintiffs' offers of proof of their individual testimony as presented to this Court and upon arguments of counsel, it is specifically found that:

1. DONALD LINDSEY and EDNA LINDSEY reside at 3732 S. E. Grant Court, City of Portland, with their three children, and that DONALD LINDSEY is confined to a wheel chair because of crippling arthritis.
2. EVARET SNYDER resides alone at Apartment 3, 1224 S. E. Belmont, City of Portland, is 74 years of age and is, or was, a diabetic still required to take refrigerated medicine.
3. RANDALL and MARJORIE LOWE reside at 3822 N. E. 66th Avenue, City of Portland, with their two children and that RANDALL LOWE suffered a heart ailment requiring him to be off work for close to three months at the end of 1969.
4. PRINCESS THOMAS and MARIE DUNNE reside at Apartment 6, 2412 N. E. Union Avenue, City of Portland, and that PRINCESS THOMAS is under medical treatment at the present time.
5. DONALD and EDNA LINDSEY, EVARET SNYDER, RANDALL and MARJORIE LOWE, PRINCESS THOMAS and MARIE DUNNE, because of their low income, would suffer irreparable harm if this Order were not granted, in that they may be evicted and forced to accept housing in worse condition that they presently

occupy or may suffer financial expenses, placing them in difficult financial status from which they may be a long time recovering.

THEREFORE, it is hereby ORDERED that, to prevent irreparable harm and preserve the status quo, a temporary restraining order is hereby granted to the named Plaintiffs, DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, RANDALL LOWE, MARJORIE LOWE, PRINCESS THOMAS, and MARIE DUNNE, restraining the Defendants, THE HONORABLE WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah, and ALL PERSONS SIMILARLY SITUATED, HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH, from entering judgment or ordering execution on any action brought or that may be brought by the other named Defendants against the above named Plaintiffs, pursuant to Oregon Revised Statute, Sections 105.105, et seq.

IT IS FURTHER ORDERED, that the Plaintiffs, DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, RANDALL LOWE and MARJORIE LOWE, are to pay their back rent or give security therefor, and continue rent payments as they fall due to Legal Aid Service, which money is to be held by Legal Aid Service in a separate trust account until disposition of the funds is ordered by this Court.

IT IS FURTHER ORDERED that the Plaintiffs, PRINCESS THOMAS and MARIE DUNNE, are to continue to make their rent payments as usual, since it has been represented to the Court that there is no claim of substandard conditions existing in their dwelling.

This Temporary Restraining Order is to remain in full force and effect until the hearing and determination by the full court.

BY THE COURT

/s/ Alfred T. Goodwin
ALFRED T. GOODWIN
Judge

THIS ORDER CONSENTED TO:

PRESENTED BY:

/s/ John H. Clough
JOHN H. CLOUGH, Esquire
Of Attorneys for Plaintiffs

/s/ * Thomas J. Lekas
THOMAS J. LEKAS, Esquire
Attorney for Dorthea M. Normet

/s/ A. W. Metzger
A. W. METZGER, Esquire
Attorney for Orville & Vivian Grubb

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* I consent to the order except paragraph 5 as it pertains to what irreparable harm the plaintiffs Lindsey may suffer.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, ET AL., PLAINTIFFS

*vs.*

WILLIAM E. SKOURTES, ET AL., DEFENDANTS

ORDER OF COURT—Filed January 21, 1970

AND NOW, to wit, this 20th day of January, 1970, upon consideration of the Plaintiffs' offer of proof of their individual testimony as presented to this Court and upon hearing arguments of counsel, it is specifically found that:

1. Plaintiffs, DONALD and EDNA LINDSEY, EVARET SNYDER, KEITH L. OETTING, RANDALL and MARJORIE LOWE, PRINCESS THOMAS and MARIE DUNNE, are without sufficient funds to pay the costs or give security therefor for the prosecution of this action.
2. Said Plaintiffs believe that they are entitled to relief in this action.
3. Said Plaintiffs have raised a justiciable issue in this action.

THEREFORE, it is ORDERED that each of said Plaintiffs are granted leave to proceed in forma pauperis pursuant to 28 USCA Sec. 1915.

BY THE COURT

/s/ Alfred T. Goodwin
ALFRED T. GOODWIN
Judge

PRESENTED BY:

/s/ JOHN H. CLOUGH
JOHN H. CLOUGH, Esquire

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, ET AL., PLAINTIFFS

*vs.*

WILLIAM E. SKOURTES, ET AL., DEFENDANTS

ANSWER OF DEFENDANT DOROTHEA H. NORMET TO PLAINTIFFS' AMENDED COMPLAINT—Filed March 13, 1970

Comes now defendant DOROTHEA M. NORMET and for her answer to plaintiffs' amended complaint admits, denies and alleges as follows:

I.

Answering Paragraph I, denies the allegations contained in subparagraph 1, except admits that this is a civil action on behalf of plaintiffs for a declaratory judgment of the unconstitutionality of the Oregon Revised Statute Sections 105.105, et seq., temporary restraining order and injunction, and admits allegations in subparagraphs 2 and 3.

II.

Answering Paragraph II, denies the allegations therein, except admits that plaintiffs DONALD LINDSEY and EDNA LINDSEY, husband and wife, reside at 3732 S. E. Grant Court, City of Portland, County of Multnomah, State of Oregon.

III.

Answering Paragraph III, denies the allegations contained therein, except admits that defendant NORMET is the holder of the record title to the premises occupied by the plaintiffs LINDSEY and LINDSEY at 3732 S. E. Grant Court, Portland, Oregon, and that her interest in

said premises is subject to an outstanding contract of sale and the rights of the contract purchasers' assignee, Jim Hines.

IV.

Answering Paragraph IV, admits that Oregon Revised Statute, Sections 105.105, et seq., reads substantially as alleged.

V.

Answering Paragraph V, denies the allegations therein.

VI.

Answering Paragraph VI, denies the allegations therein, except admits the plaintiffs LINDSEY and LINDSEY are in possession and occupy the premises at 3732 S. E. Grant Court, Portland, Oregon, and that the dwelling on said premises has been declared substandard and ordered vacated by the Bureau of Buildings of the City of Portland.

VII.

Answering Paragraphs VII, VIII and IX, denies the allegations therein.

Defendant NORMET alleges the following affirmative defenses:

FIRST DEFENSE

Plaintiffs' amended complaint fails to state a claim against defendant NORMET upon which relief can be granted.

SECOND DEFENSE

Plaintiffs have failed to join indispensable parties to this suit.

THIRD DEFENSE

Plaintiffs, prior to commencing this suit, failed to have a final settlement or determination of their claims by the courts of the State of Oregon.

## FOURTH DEFENSE

That a landlord-tenant relationship does not exist between defendant NORMET and plaintiffs LINDSEY and LINDSEY.

WHEREFORE, defendant NORMET prays that plaintiffs' amended complaint be dismissed and plaintiffs take nothing thereby and defendant NORMET have her costs of suit incurred herein and such other relief as may be proper.

/s/ Theodore B. Jensen
THEODORE B. JENSEN
Of Attorneys for Defendant
Dorothea M. Normet

[Certificate of Service (Omitted in Printing)]

[Lodged 6-17-70]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, KEITH L. OETTING, RANDALL LOWE, MARJORIE LOWE, PRINCESS THOMAS, MARIE DUNNE, BONNIE L. COLTON, and all other persons similarly situated, PLAINTIFFS

*vs.*

DOROTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah; ALL PERSONS SIMILARLY SITUATED HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH; DONALD DALE TIMMONS, HOWARD D. STEINBACH and his wife, MARION STEINBACH and STANLEY E. HARTMAN, individually and in their capacities as officers and/or agents of the Belmont East Corporation, DEFENDANTS

PRE-TRIAL ORDER—Filed June 18, 1970

As a result of conferences heretofore held among counsel, the following issues of fact and law were framed and exhibits identified:

I

STATEMENT OF JURISDICTION
AND
NATURE OF PROCEEDINGS

This is a civil action brought by the individual named Plaintiffs on their own behalf and on the behalf of a class of persons defined as all those persons similarly situated who have been, are being, or may be affected by the operation of Oregon Revised Statute, Sections

105.105, et seq., commonly known as the Forcible Entry and Wrongful Detainer Law, against various Defendants who Plaintiffs contend represent the landlords of the respective named Plaintiffs and the Honorable William C. Beers, individually and in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah, and as representative of a class of Defendants defined as all those persons similarly situated who are holding office as Judges of the District Court of the State of Oregon for the County of Multnomah.

The Plaintiffs seek to obtain a declaratory judgment that the provisions of Oregon Revised Statute, Sections 105.115, 105.125 (3 and 4), 105.135, 105.140, 105.145, 105.150, and 105.160, are unconstitutional and void and that proceedings instituted thereunder are unconstitutional and void and unenforceable; and to obtain a preliminary injunction, thereafter to be made permanent, to restrain the enforcement of the aforesaid objectionable statutory provisions.

The jurisdiction of this Court has been invoked pursuant to Title 28 USC Sections 1343, 2201 and 2202, and Title 42 USC Section 1983.

## II.

## AGREED FACTS

A. Statement of Agreed Facts between Plaintiffs, Donald Lindsey and Edna Lindsey, and Defendant, Dorothea M. Normet.

1. Donald Lindsey and Edna Lindsey are individuals, citizens of the United States and of the State of Oregon, who reside with their three children, ages 14, 10, and 9, at 3732 S. E. Grant Court, City of Portland, County of Multnomah, State of Oregon.

2. Donald and Edna Lindsey and their family originally rented said premises from Jim Hines and have been, and now are, occupying the premises as tenants, with the monthly rental payments being $100, per month.

3. Dorothea M. Normet is the record title holder to the property located at 3732 S. E. Grant Court, City of Portland, County of Multnomah, State of Oregon.

4. Dorothea M. Normet has requested and received rental payments for the aforesaid premises in the amount of $100 per payment for the months of August, September, October, and November of 1969.

5. The Bureau of Buildings of the City of Portland, Oregon, on November 10, 1969, declared the dwelling at the aforesaid premises unfit for habitation due to substandard conditions, including rusted gutters, broken windows, broken plaster, missing rear steps, improper sanitation, etc.

6. Notice that the dwelling at the aforesaid premises was in violation of the Housing Codes of the City of Portland, and that the owner, agent or occupant of said dwelling was required before 30 days to vacate the structure or show cause to the Bureau of Buildings of the City of Portland why said dwelling should not be vacated was, on November 10, 1969, posted on the front door of said dwelling and a copy of said notice sent by Certified Mail No. 847239 to the record deed holder, William E. Skourtes, which Certified Mail was received and delivered on November 15, 1969, signed William E. Skourtes by his agent, Dorothea Normet.

7. Donald Lindsey and Edna Lindsey, or their agents or counsel, have requested of Dorothea M. Normet, or her agents or counsel, to repair various conditions on the aforesaid premises. Dorothea M. Normet did not make said repairs, except that she arranged for plywood to be nailed across one of the windows.

8. That the interest of Dorothea M. Normet as the record owner of the premises occupied by Defendants Donald Lindsey and Edna Lindsey at 3732 S. E. Grant Court, Portland, Oregon, is subject to

an outstanding contract of sale, dated May 25, 1961, in which the purchaser is Bernice Reed, who subsequently assigned her buyer's interest in the contract to Jim Hines.

9. That Defendant Dorothea M. Normet has commenced, and there is now pending in the Circuit Court of the State of Oregon for the County of Multnomah, a suit to foreclose such contract and the buyer's interest therein.

10. That the rent payments received by the Defendant, Dorothea M. Normet, from the Plaintiffs, Donald Lindsey and Edna Lindsey, were received by said Defendant and applied on the unpaid balance due on said contract of sale of said property.

11. On the 15th day of December, 1969, the Defendant Dorothea M. Normet by her attorney, Thomas J. Lekas, wrote to the Plaintiffs Mr. and Mrs. Donald Lindsey in regard to the premises at 3732 S. E. Grant Court, Portland, Oregon. Said letter speaks for itself. (Plaintiffs' Exhibit 14.)

12. If an FED action, pursuant to Oregon Revised Statutes, was brought against them by the Defendant Dorothea M. Normet, the said Plaintiffs would raise equitable and affirmative defenses similar to those raised in *Grubb* v. *Lowe*, No. 76728, District Court of the State of Oregon for the County of Multnomah, and *Aluminum Window Products Co.* v. *Oetting*, No. 354795 in the Circuit Court of the State of Oregon for the County of Multnomah. (See Plaintiffs' Exhibits 1 and 2 herein.)

B. Evaret Snyder vs. Donald Dale Timmons, Howard D. Steinbach and his wife, Marion Steinbach, and Stanley E. Hartman, individually and in their capacities as officers and/or agents of the Belmont East Corporation.

1. Evaret Snyder is an individual, citizen of the United States and of the State of Oregon who resides at Apartment 3, 1224 S. E. Belmont, City of Portland, County of Multnomah, State of Oregon.

2. Evaret Snyder is a tenant of the Belmont East Corporation and his monthly rental of the aforementioned premises is set at $40 per month.

3. The officers, agents and/or owners of the Belmont East Corporation are Donald Dale Timmons, Howard D. Steinbach and his wife, Marion Steinbach, and Stanley E. Hartman.

4. Evaret Snyder has withheld rent to compel the landlord to repair certain conditions in his apartment which allegedly render it substandard and in violation of the Housing Code and Building Code of the City of Portland, Oregon. (Plaintiffs' Exhibits 15-24, 38-44.)

5. The Defendant-landlords individually or through their agents, servants, or employees, have threatened Evaret Snyder with eviction for non-payment of rent.

6. If an action were brought pursuant to Oregon Revised Statute, Sections 105.105, et seq., Evaret Snyder would raise defenses similar to those raised in the State Court actions brought against Randall Lowe and Keith L. Oetting. (Plaintiffs' Exhibits 1 & 2.)

C. Bonnie L. Colton (vs Gene W. Rossman, individually and in his capacity as Executive Director of the Housing Authority of Portland, Oregon; and the Housing Authority of Portland, Oregon; and Richard McGowan, et ux.)

1. Bonnie L. Colton is an individual, citizen of the United States and of the State of Oregon, residing with her four children at 5105 N. E. 24th Street, City of Portland, County of Multnomah, State of Oregon.

2. Bonnie L. Colton and her family are tenants of the Housing Authority of Portland, Oregon, and her monthly rental of the aforementioned premises is set at $40.50 per month.

3. The record title holders of the aforementioned property are Richard McGowan, et ux, who have executed a lease to the Housing Authority of Portland, Oregon, under their "leased housing" program whereby the Housing Authority is permitted to sublease the said premises to eligible persons at a rental to be determined according to need by the Housing Authority, guaranteeing the owner a specified monthly rental.

4. The Housing Authority of Portland, Oregon, leased the aforementioned premises to Bonnie L. Colton.

5. Gene W. Rossman is the Executive Director of the Housing Authority of Portland, Oregon, a public corporation.

6. The Housing Authority of Portland, Oregon, through its officers, agents, servants or employees first threatened then filed an action of Forcible Entry and Wrongful Detainer against Bonnie L. Colton at Number 78337, in the District Court of the State of Oregon for the County of Multnomah.

7. Bonnie L. Colton has raised several affirmative defenses to the State Court action, all of which are more fully set forth in the answer to the complaint filed therein. (Plaintiffs' Exhibit 47.)

8. Bonnie L. Colton had pending in this lawsuit an action for damages to recover the amount of excess utility bills she has incurred and for punitive damages, subject to the Housing Authority of Portland's claim that there is no jurisdiction and no merit to the claim. (See Paragraph IX.)

9. By agreement of counsel and consent of the District Court Judge, William C. Beers, because Plaintiff's counsel raises no objections, Bonnie L. Colton will be permitted to raise all of her affirmative defenses in the State Court action.

D. Keith L. Oetting (vs Edith Manning, individually and in her capacity as Secretary-Treasurer of Aluminum Window Products Company.)

1. Immediately prior to the hearing held by the Honorable Ray D. Shoemaker, Judge of the District Court, on December 17, 1969, in the case of Aluminum Window Products Company vs. Keith L. Oetting, at Number 75743 in the District Court of the State of Oregon for the County of Multnomah, counsel for Keith L. Oetting served upon counsel for Aluminum Window Products Company, Donald L. Alderton, an answer which formally raised two affirmative defenses of constitutionality of the proceeding and illegality of contract.

2. At oral argument before the Honorable Judge Ray D. Shoemaker, counsel for Keith L. Oetting argued the aforementioned defenses and raised orally the defenses of failure of consideration, warranty of fitness of habitability, unclean hands, and public policy.

3. Edith Manning was asked on cross examination questions concerning the condition of the premises to which her counsel, Donald L. Alderton, objected as subject not having been gone into on direct testimony; which objection was overruled, and she answered that the premises had been remodeled, although she, herself, had not personally inspected the interior of the premises.

4. Keith L. Oetting took the stand at the aforesaid hearing to testify as to the condition of the said premises, and when such questions were asked on direct, counsel for the Aluminum Window Products Company objected on the grounds that such testimony was irrelevant to the proceeding and was sustained by the Honorable Judge Shoemaker, with an exception noted to counsel for Keith L. Oetting.

5. The Honorable Judge Shoemaker ruled on the objection raised as aforesaid on the grounds that the defenses raised were not permitted in that pro-

ceeding since the only issue was the non-payment of rent and the questions asked on direct were irrelevant.

6. The Honorable Judge Shoemaker then ordered the case transferred to Circuit Court because it involved a written lease for a period of one year.

7. The case at Number 75743 in the District Court of the State of Oregon for the County of Multnomah was subsequently transferred to Number 354 795 in the Circuit Court of the State of Oregon for the County of Multnomah.

8. Counsel for Keith L. Oetting subsequently filed an Amended Answer which formally raised the aforementioned defenses. (Plaintiffs' Exhibit 2.)

9. The State Court action was settled by agreement and the Defendant-landlord was dismissed from this suit.

E. Randall Lowe and Marjorie Lowe (vs. Orville G. Grubb and Vivian Grubb).

1. That Orville G. Grubb and Vivian L. Grubb are the owners of the property located at 3822 N. E. 66th Ave., City of Portland County of Multnomah, State of Oregon.

2. That Randall Lowe and Marjorie Lowe are tenants of the aforesaid property owned by Orville G. Grubb and Vivian L. Grubb.

3. That Orville G. Grubb and Vivian L. Grubb brought an action for Forcible Entry and Wrongful Detainer, pursuant to Oregon Revised Statutes, Sections 105.105, et seq., at Number 76728 in the District Court of the State of Oregon for the County of Multnomah against Randall Lowe and Marjorie Lowe.

4. Randall Lowe and Marjorie Lowe filed an answer to the State Court Complaint setting forth defenses as more fully set forth in said answer.

5. At the hearing before the Honorable William C. Beers, Judge of the District Court of the State of Oregon for the County of Multnomah, on motion of the Plaintiff-Landlords therein, all of the affirmative defenses raised in Defendant Lowe's answer were stricken as not being permitted under Oregon Revised Statute, Sections 105.105, et seq. (Plaintiffs' Exhibit 1.)

6. The State Court action was settled by agreement and the Defendant-Landlord was dismissed from this suit.

F. Princess Thomas and Marie Dunne (vs. George C. Staples, individually and in his capacity as owner and Secretary of AAA Heating and Cooling, Inc., and Dorothy Brauser.)

1. Princess Thomas and Marie Dunne are individuals, citizens of the United States and of the State of Oregon, who resided at Apartment 6, 2412 N. E. Union Avenue, City of Portland, County of Multnomah, State of Oregon.

2. The record title holder of the aforementioned premises is AAA Heating and Cooling, Inc., who leased all of the apartments located thereon to Dorothy Brauser who in turn sub-leased the apartments to tenants of her choosing.

3. Dorothy Brauser leased Apartment 6 to Princess Thomas and Marie Dunne.

4. Dorothy Brauser threatened the Plaintiffs' eviction allegedly because they were welfare recipients. (Plaintiffs' Exhibit 48.)

5. Princess Thomas and Marie Dunne have since moved from these premises.

G. Donald Lindsey, Edna Lindsey, Evaret Snyder, Keith L. Oetting, Randall Lowe, Marjorie Lowe, Princess Thomas, Marie Dunne, Bonnie L. Colton, and all other persons similarly situated, vs. The Honorable William C. Beers, in his capacity as Judge of the District Court of the State of Oregon for the County of Multno-

mah; and all persons similarly situated holding office as Judges of the District Court of the State of Oregon for the County of Multnomah.

1. All of the facts as more fully set forth in this Pre-Trial Statement are incorporated herein.

2. All named Plaintiffs are members of a class of persons who have been, are being, or may be affected by the operation of Oregon Revised Statute, Sections 105.105, et seq.

3. The Honorable William C. Beers is the Presiding Judge of the District Court of the State of Oregon for the County of Multnomah and is a duly elected holder of that office.

4. The Honorable William C. Beers is representative of a class of Defendants who are all persons similarly situated holding office as Judges of the District Court of the State of Oregon for the County of Multnomah.

5. The aforesaid District Court would hear and determine all actions that have been, in fact, brought against the named Plaintiffs in this case and would hear and determine the majority of actions brought against members of the class of Plaintiffs to this action.

6. The said Defendant Judges have in the past refused to hear any of the defenses raised by Plaintiffs in these State Court actions and Plaintiffs are advised and believe that they would continue to strike all such affirmative defenses if they are to be filed in the future. (Plaintiffs' Exhibits 1 and 2.)

7. The Defendant Judge, William C. Beers, permitted the raising of the defenses of Bonnie L. Colton in her individual case because counsel for the Housing Authority of Portland, Oregon, raised no objections thereto. (Plaintiffs' Exhibit 47.)

8. Plaintiffs are advised and believe that the aforementioned ruling is only applicable to the individual case of Bonnie L. Colton.

## III.

## PLAINTIFFS' CONTENTIONS

Palintiffs make the contentions that the provisions of Oregon Revised Statute, Sections 105.105, et seq., were enacted and continue to exist in contravention to the United States Constitution and the Constitution of the State of Oregon in the following particulars:

(1) Section 105.125 (3) and (4) does not require the plaintiff in an action for Forcible Entry and Wrongful Detainer to allege facts supporting his cause of action with particularity to enable the defendant to have sufficient notice of plaintiff's grounds and rights to which he may respond and these provisions are violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and, further, are violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and

(2) Section 105.135 does not provide adequate time for that defendant to investigate, obtain counsel, or prepare a defense to an action for Forcible Entry and Wrongful Detainer and this provision is violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 10 of the Constitution of the State of Oregon and, further, is violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and

(3) Section 105.140 permits only a two-day continuance without payment of money as security,

which provision is violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 10 of the Consitution of the State of Oregon and, further, is violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and

(4) Sections 105.150 do not permit that defendant to raise other equitable and meritorious substantive defenses to the action for Forcible Entry and Wrongful Detainer such as illegality of contract for plaintiff's violation of Housing Codes or plaintiff's breach of warranty that the property is habitable or fit for the particular purpose intended, etcetera, and said provisions are violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and, further, is violative of that defendant's right to equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon; and

(5) Section 105.115 defines the causes of unlawful holding by the defendant and leaves no latitude to include other equitable and meritorious substantive justifications for holding the property in question, such as those given as examples in sub-part (4) of this paragraph, and said provisions are violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 10 of the Constitution of the State of Oregon and, further, is violative of that defendant's right to equal privileges and immunities and equal

protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article I, Section 20 of the Constitution of the State of Oregon; and,

(6) Section 105.160 provides that if judgment is rendered against the defendant, he must post money or security to protect this rights in an appeal, which provision is violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 10 of the Constitution of the State of Oregon and, further, is violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article I, Section 20 of the Constitution of the State of Oregon; and,

(7) Sections 105.105, et seq., provide for a summary disposition in a procedure that is unbalanced and weighted in favor of one party, to wit: the plaintiff and, as such, is violative of the defendant's right to due process of the law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 10 of the Constitution of the State of Oregon and, further, is violative of the defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon.

(8) Plaintiffs contend that at the time of the filing of the suit herein, a landlord-tenant relationship, within the meaning of Oregon Revised Statute, Sections 105.105, et seq., existed between the Plaintiffs Donald and Edna Lindsey and the Defendant Dorothea Normet. Plaintiffs further contend that said landlord-tenant relationship existed prior to the said

filing of this lawsuit and subsequent to the said filing and, in fact, still exists.

(9) Plaintiffs contend that depositions to be taken for Defendant Dorothea N. Normet by her attorneys of record in regard to the procedural aspects of FED actions in the State of Oregon are not necessary and are irrelevant and immaterial.

(10) Plaintiffs contend that the Three-Judge Court herein cannot invoke the doctrine of abstention for failure to exhaust state remedies, because such doctrine is not applicable herein. The Supreme Court of the United States has held, in cases which will be cited in Plaintiffs' Legal Memorandum and later filed, that the doctrine of abstention does not apply to suits brought under Title 42 U.S.C. Section 1983.

## IV.

## DEFENDANTS' CONTENTIONS

A. Defendant, Dorothea M. Normet, makes the following contentions:

1. That Sections 105.105, et seq., the provisions of ORS are constitutional and are not in contravention to the Constitution of the United States or the Constitution of the State of Oregon;

2. Denies the Plaintiffs' contention that Section 105.105, et seq., of ORS are unconstitutional;

3. That the Court should invoke the doctrine of abstention in this case against the Plaintiffs and in favor of the Defendant for the reason that there has been no exhaustion of State remedies;

4. That the relationship of landlord-tenant does not exist between the Defendant, Dorothea M. Normet, and the Plaintiffs, Donald Lindsey and Edna Lindsey.

## V.

## ISSUES OF FACT

There are no issues of fact to be determined by this Court.

## VI.

## ISSUES OF LAW

The following are the issues of law to be determined by the Court:

1. Is Oregon Revised Statute, Section 105.125 (3) and (4), which does not require the plaintiff in an action for Forcible Entry and Wrongful Detainer to allege facts supporting his cause of action with particularity, violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and, further, is it violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon?

2. Is Oregon Revised Statute, Section 105.135, which requires a hearing to be held within two to four days, violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and, further, is it violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon?

3. Is Oregon Revised Statute, Section 105.140, which permits only a two-day continuance without payment of money as security, violative of that defendant's right to due process of law as guaranteed

by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and, further, is it violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon?

4. Does Oregon Revised Satute, Sections 105.145 and 105.150, which does not permit that defendant to raise other equitable and meritorious substantive defenses to the action for Forcible Entry and Wrongful Detainer, violate that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and, further, are they violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon?

5. Is Oregon Revised Statute, Section 105.115, which defines the causes of unlawful holding by the defendant, violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and, further, is it violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon?

6. Is Oregon Revised Statute, Section 105.160, which provides that if judgment is rendered against the defendant, he must post money or security to protect his rights in an appeal, violative of that defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the

United States Constitution and Article I, Section 10 of the Constitution of the State of Oregon and, further, is it violative of that defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon?

7. Does Oregon Revised Statute, Sections 105.105, et seq., provide for a summary disposition in a procedure that is unbalanced and weighted in favor of one party, to wit: the plaintiff, violate the defendant's right to due process of the law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Atricle I, Section 10 of the Constitution of the State of Oregon and the defendant's right to equal privileges and immunities and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 20 of the Constitution of the State of Oregon?

8. At the time of the filing of the action herein, was there a landlord-tenant relationship, within the meaning of Oregon Revised Statute, Sections 105.105, et seq., existing between Plaintiffs Donald Lindsey and Edna Lindsey and Defendant Dorothea M. Normet?

9. Should the three-judge Court herein invoke the doctrine of abstention?

10. Are the Oregon Revised Statutes, pertaining to the FED and eviction proceedings, in violation of the Constitution of the United States and the Constitution of the State of Oregon?

## VII.

## EXHIBITS

The following exhibits were produced and marked, and may be received in evidence, if otherwise admissible, without further authentication. Except as hereinafter noted, each is what it purports to be:

## PLAINTIFFS' EXHIBITS

1. Certified copies of all pleadings in the case of *Grubb* vs. *Lowe*, at No. 76728 in the District Court of the State of Oregon for the County of Multnomah. (Identified and admitted into evidence.)

2. Certified copies of all pleadings in the case of *Aluminum Window Products Co.* vs. *Oetting*, at No. 354-795 in the Circuit Court of the State of Oregon for the County of Multnomah. (Identified and admitted into evidence.)

3. Certified copies of the records of the Bureau of Building Inspections of the City of Portland, Oregon, concerning the Lindsey dwelling. (Identified only.)

4. Photograph of Lindsey residence. Front exterior view. (Identified and admitted into evidence.)

5. Photograph of Lindsey residence. North half of kitchen ceiling. (Identified and admitted into evidence.)

6. Photograph of Lindsey residence. West end of living room ceiling. (Identified and admitted into evidence.)

7. Photograph of Lindsey residence. The only bathroom facility on the main floor. (Identified and admitted into evidence.)

8. Photograph of Lindsey residence. First floor bathroom. (Identified and admitted into evidence.)

9. Photograph of Lindsey residence. Ceiling in entry hall, first floor. (Identified and admitted into evidence.)

10. Photograph of Lindsey residence. First floor bathroom ceiling. (Identified and admitted into evidence.)

11. Photograph of Lindsey residence. Wall along top of stairs to second floor. (Identified and admitted into evidence.)

12. Photograph of Lindsey residence. Upstairs children's bedroom, showing plywood to cover windows. (Identified and admitted into evidence.)

13. Photograph of Lindsey residence. Back porch without stairs. (Identified and admitted into evidence.)

14. Copy of letter sent by Thomas Lekas, Esquire, to Donald and Edna Lindsey. (Identified only.)

15. Photograph of Snyder residence. Front exterior view. (Identified only.)

16. Photograph of Snyder residence. Walk way on west side of house composed of unfinished planks set on the ground. Planks were loose and are slippery when wet. (Identified only.)

17. Photograph of Snyder residence. Same walk way—closer view. (Identified only.)

18. Photograph of Snyder residence. Mr. Snyder's refrigerator, furnished by landlord, showing wooden props that must be used to keep the door closed so that the refrigerator can function properly. (Identified only.)

19. Photograph of Snyder residence. Snyder bathroom, looking through the entrance into the kitchen. (Identified only.)

20. Photograph of Snyder residence. Bathroom light, showing frayed wiring. (Identified only.)

21. Photograph of Snyder residence. (Identified only.)

22. Photograph of Snyder residence. (Identified only.)

23. Photograph of Snyder residence. (Identified only.)

24. Deposition of Mrs. Josephine Brown, expert witness on behalf of Plaintiffs.

25. Deposition Exhibit "A". The exterior front of the Lindsey home at 3732 S. E. Grant Court doesn't look too bad from the picture but the gutters and eaves are full of holes and the porch supports are tearing loose from the roof. These details are not shown in the picture because it was taken from a distance. The expert witness is in the picture, lower center, walking down the porch steps.

26. Deposition Exhibit "B". A close-up of the Lindsey's front door and lock. The lock works only

from the inside; if fastened it can't be unlocked from the outside. The Lindseys must, therefore, wait until all family members are home at night before locking the door. Witness testifies that cats were able to push the door open and det back in when the lock was unfastened. Mrs. Lindsey has to jam the door with magazines or papers to keep it shut during the daytime. The picture also shows a thirty-day warning notice posted December 10, 1969, by the City, taped to the door window; it requires improvement of the property within thirty days of posting or eviction or removal of all occupants.

27. Deposition Exhibit "C". An interior shot of the living room ceiling with the front door in background. There is a large chunk of plaster missing from the ceiling. Mrs. Lindsey and Bobbie Tichenor are in the picture. Also shown is Mr. Lindsey's wheelchair. Witness says that she was there once when Mr. Lindsey was in the wheelchair.

28. Deposition Exhibit "D". A close-up of the main floor lavatory-toilet. The top half of the water tank is missing, the toilet doesn't work, the walls have crumbling plaster. There is also a second-story toilet that does work.

29. Deposition Exhibit "E". Another photograph of the same main-floor lavatory. It is a very narrow room, apparently a closet at one time. This room is about 8 feet long and 2 feet wide, with no faucet, tub, or sink—just a toilet. This room also opens onto a hall that leads directly to the kitchen a few feet away.

30. Deposition Exhibit "F". The ceiling of the main-floor lavatory, showing missing plaster on the ceiling and wallpaper peeling due to moisture.

31. Deposition Exhibit "G". A photograph of the kitchen ceiling, half of which is missing its plaster. There is also pictured a light fixture that doesn't work. The witness says she has seen only two ceiling-light fixtures in the entire house that work, and that the Lindseys mostly use lamps for lighting.

32. Deposition Exhibit "H". A picture from the second floor down the stairs to the main floor. The plaster is off the wall. There is no railing to aid the crippled Mr. Lindsey up and down the stairs.

33. Deposition Exhibit "I". The picture of a heating vent on the second floor in the hall; there are no heating vents in the bedrooms. There is no register guard over the vent except Mrs. Lindsey's cake rack which is there to keep children, etc., from falling in.

34. Deposition Exhibit "J". The oldest girl's bedroom in the Lindsey house. The witness is on the left. The picture shows no usable windows. They were broken and in need of replacement, and plywood was put up on the inside.

35. Deposition Exhibit "K". The same bedroom as in Exhibit "J", showing the only light source and electrical light source therein. The picture is too dark to show it, but the electrical outlet is on the wall several inches below the light fixture. The wires are bare between the base of the outlet and the electrical connection. An extra piece has been added to allow several appliances to be plugged in. A metal television set was plugged in near to these very bare wires.

36. Deposition Exhibit "L". A shot of the back porch of the Lindsey home showing the back steps to be missing. There are three exits from the house, the two others are close to the front.

37. Deposition Exhibit "M". The basement laundry room showing the washing machine torn apart and inoperable. The Lindseys have been unable to use it since they moved in.

38. Deposition Exhibit "N". This is Mr. Snyder's one-room apartment. Mr. Snyder is sitting on the bed. The picture is taken from the entry to the adjoining kitchen and bath. It shows a single light fixture hanging from the ceiling, apparently powered from the wall.

39. Deposition Exhibit "O". A close-up of the aforementioned light fixture, with another appliance plugged into it.

40. Deposition Exhibit "P". The light over Mr. Snyder's bed, attached with string and cardboard to the bed frame.

41. Deposition Exhibit "Q". A close-up of the light mentioned in Exhibit "P".

42. Deposition Exhibit "R". A photograph looking from Mr. Snyder's bedroom through his kitchen and into his bathroom. The kitchen is about 4 feet by 5 feet; the bathroom is directly off the kitchen. There are no doors or petitions between them. The bathroom is slightly larger than the kitchen. The shower is merely a shower that is set into the wall of the bedroom with a brass curtain rod in an "L" shape around the area that would be covered by a shower head. There is no drain for the shower except a hole in one side of the bathroom wall. There is no partition or raised area to keep the shower water from running off. Note also that there is no partition to separate the shower area from a leaky toilet, if that toilet should ever leak.

There is one light fixture for the kitchen and bathroom. It is in the bathroom and close to the kitchen. The kitchen fixture went out two years ago and has never been replaced, in spite of repeated complaints by Mr. Snyder. The bathroom fixture is the only power source for the refrigerator which sits in the bedroom just off the entrance. It is plugged in by an extension cord and the wiring is so thin that you can feel the power surging through it.

43. Deposition Exhibit "S". A close-up of Mr. Snyder's toilet and shower room. The toilet would not stop running when flushed the day that the witness was there.

44. Deposition Exhibit "T". A close-up of the bathroom fixture showing the extension cord plugged into it from the refrigerator. This extension cord extends clear across the kitchen from the refrigerator into the bathroom.

45. Deposition Exhibit "U". Top eight-quarter section of first page Section 2 of the Oregon Journal,

dated Tuesday, February 2, 1970, concerning Mrs. Josephine Brown's nomination as one of the Ten Women of Accomplishment for 1969; describing her activities in the field of housing in Portland, Oregon.

46. Deposition Exhibit "Y". Top half section of first page Section 2 of the Oregon Journal, dated Thursday, February 12, 1970, concerning Mrs. Josephine Brown's activities in the field of housing in Portland, Oregon.

47. Certified copies of all pleadings in the case of *Housing Authority of Portland, Oregon*, vs. *Colton*, at No. 78337 in the District Court of the State of Oregon for the County of Multnomah.

48. Copy of letter sent by Dorothy Browser to Princess Thomas and Marie Dunne.

## DEFENDANTS' NORMATS EXHIBITS

1. Proceedings Dist. Ct. Mult. Cty. Housing Auth. vs. Colton.

2. Supplemental Complaint, Mult. Cty. Circuit Court #357351.

## ACTION BY THE COURT

The Court has ruled that:

1. January 12 and January 20, 1970—Plaintiffs Donald Lindsey, Edna Lindsey, Evaret Snyder, Randall Lowe, Marjorie Lowe, Princess Thomas and Marie Dunne be granted a temporary restraining order against the Honorable William C. Beers and the class of judges restraining them from entering judgment or ordering execution against said named Plaintiffs on the condition that said named Plaintiffs deposit their rent into an escrow account kept by Legal Aid Service; said restraining order to remain in effect until determination of this matter by the full court.

2. January 14, 1970—Notification and Certificate signed requesting three-judge statutory court to be convened.

3. January 20, 1970—Order granting leave to maintain this action as a class action pursuant to Federal Rules of Civil Procedure Number 23 (a) and (b) (1 & 2), defining the class as all those persons in the State of Oregon who are, have been, or may be, affected by the operation of Oregon Revised Statute, Sections 105.105, et seq.

4. January 20, 1970—Order granting leave to named Plaintiffs to proceed in forma pauperis, pursuant to 28 USC Section 1915.

5. February 2, 1970—Orders dissmissing Orville G. Grubb and Vivian L. Grubb and Edith Manning, individually and in her capacity as Secretary-Treasurer of Aluminum Window Products Company, as Defendants in this case.

6. February 2, 1970—Order joining as Defendant Dorothy Brauser.

7. February 10, 1970—Order intervening Bonnie L. Colton as a plaintiff and joining Richard McGowan, et ux, and Gene W. Rossman, Fred M. Rosenbaum, and William G. Martin as Defendants and granting Bonnie L. Colton a temporary restraining order against the Honorable William C. Beers, restraining her eviction on condition that she pay her rent into the escrow account kept by Legal Aid Service.

8. February 10, 1970—Order permitting Bonnie L. Colton to proceed in forma pauperis pursuant to 28 USC Section 1915.

9. February 16, 1970—Order granting Plaintiffs copies of transcripts of hearings of January 12 and January 20, 1970, at the expense of the United States.

10. March 11, 1970—Order joining as Defendants Donald Dale Timmons, Howard D. Steinbach and his wife, Marion Steinbach, and Stanley E. Hartman, individually and in their capacities as officers and/or agents of the Belmont East Corporation.

## VIII.

## EXPERT TESTIMONY

*Plaintiffs*

The testimony of Mrs. Josephone Brown, taken by deposition for use at trial on February 13, 1970 is offered as expert testimony concerning low-income housing, its availability and condition, and poverty all in general and as applied to the Lindseys and Snyder, in general and to show irreparable harm to Plaintiffs and for the identification of photographs marked Plaintiffs' Exhibits 25 through 44. A summary of her testimony is attached to this pre-trial order as Appendix "I".

*Defendants*

Defendant Dorothea M. Normet:

1. Testimony of Denton G. Burdick, Attorney at Law, to be taken by deposition on April 15, 1970, will be offered as expert testimony concerning practice and use of ORS 105.105, et seq.

2. Compilation and analysis of FED cases filed in Multnomah County for the years 1968 and 1969 is being made and will be submitted on stipulation between counsel for Plaintiffs and counsel for Defendants.

## X.

The foregoing constitutes the Pre-Trial Order in the above cause; the pleadings pass out of the case and are superseded by this Order, which shall not be amended except by consent of the parties, or by Order of the Court, to prevent manifest injustice.

DATED this 18th day of April, 1970.

/s/ Alfred T. Goodwin
ALFRED T. GOODWIN
District Judge

The foregoing Pre-Trial Order is approved.

Attorneys for Plaintiffs:

By: /s/ John H. Clough — April 23, 1970
JOHN H. CLOUGH, Esquire — Date
Director, Trial & Appellate Div.

/s/ Kenneth J. Keller — April 23, 1970
KENNETH J. KELLER, Esquire — Date

/s/ Joseph C. Morehead — April 23, 1970
JOSEPH C. MOREHEAD, Esquire — Date

/s/ Keith E. Tichenor, — April 23, 1970
KEITH E. TICHENOR, Esquire — Date

/s/ Charles J. Merten — April 23, 1970
CHARLES J. MERTEN, Esquire — Date
Director, Legal Aid Service

Attorneys for the
Defendant Normet:

By: /s/ Theodore B. Jensen — 6-17-70
THEODORE JENSEN, Esquire — Date
Attorney for Dorothea M. Normet

/s/ Thomas Lekas — 6-17-70
THOMAS LEKAS, Esquire — Date
Attorney for Dorothea M. Normet

/s/ William A. Martin — 6-17-70
WILLIAM A. MARTIN — Date
Attorney for Dorothea M. Normet

# APPENDIX I

## Summary of Deposition of MRS. JOSEPHINE BROWN Expert Witness for Plaintiffs

*Background and Qualifications:* Mrs. Josephine Brown is married to P. Clair Brown and resides with her husband and three sons, ages 14, 20 and 22, at 4126 S.E. Oak Street, Portland, Oregon. She has resided in Portland since 1928. She is a graduate of Oregon State University with a BS degree in Home Economics.

Mrs. Brown is a member of Mt. Tabor Presbyterian Church, Portland Presbyterial Society, Church Women United in Portland, Glencoe and Washington High School PTA, East CAP Housing and Planning Commission, East Central Church Non-Profit Housing Corporation, Interfaith Housing Committee, Metropolitan Housing Inc., League of Women Voters, Inc., Greater Portland Council of Churches Social Concerns Committee, and Oregon Older Girls Advisory Board. She is also chairman of East CAP's Housing and Planning Commission.

In 1970, Mrs. Brown was named by the Oregon Journal as one of the Ten Women of Accomplishment in 1969 in the category of Community Housing. See Plaintiffs' Deposition Exhibits "U" and "V" which were offered to show her reputation and standing in the community as an expert on Housing in Portland.

Mrs. Brown has entered and inspected close to 200 homes in Portland of the low income bracket within the last four years.

*Description of East CAP Housing Project:* A group of churches in the east-central area of Portland started East CAP as a Community Action Program. Its initial function was to listen to the needs of the poor community and develop community service programs for the residents in east-central Portland. They found housing to be a high priority problem. In 1966 they formed a housing commission. Mrs. Brown joined this Commission in the Spring of 1966. For the first year, the Commission met weekly and simply studied and researched the problem of housing and sought out possible remedies. It built up a substantial library of materials on housing

problems and analyzed the subject from a national and a local viewpoint. Then, two years ago they formed a non-profit housing corporation to buy sub-standard housing, rehabilitate them and sell them to low income families. Mrs. Brown has consequently been in those homes which were rehabilitated and resold as well as in those too deteriorated to be repaired.

Mrs. Brown has read as many books on low income housing as she can. She has been involved in low income housing problems in Portland for four years. She has spoken to over two dozen groups on the subject in the last six months, accompanied by a slide presentation on housing in Portland. She has also been on a panel with Representative Roger Martin of the State Legislature, and Fred VanNatta, President of the Portland Home Builders Association, where they discussed the problems of low income housing in Portland. She has also spoken with people in the housing business in Portland such as members of the Portland Realty Board, from whom she obtained statistics and opinions on housing problems in Portland. She has compiled an extensive file of statistics herself. Her office is in her home and her work is strictly volunteer. She is not an employee of Legal Aid Service or any other delegate agency under the Office of Economic Opportunity.

Mrs. Brown inspected the Snyder and Lindsey homes at the request of Legal Aid Service. She was also present when the photographs identified as Plaintiffs' Exhibits 25 through 44 were taken. The description of these photographs as contained in the Pretrial Order is condensed from her Deposition and is incorporated by reference in this summary as if fully set forth herein.

*Substance of Testimony:* Housing for low income families is substandard housing. Low income families are those which are usually defined as four members with an income from zero to about $4,500. per year. She has been in close to 200 or more houses in the last four years, mostly houses provided for low income families. Conditions of these houses are generally very poor and some of them are deplorable. Most have poor wiring, plumbing, roofing, heating, and need paint. They may also have one or more dangerous conditions.

Mrs. Brown has talked with many low-income people who have been evicted or who are threatened with eviction. She finds that evictions cause financial harm in that it adds additional moving costs which require skimping on food bills and this, in turn, often causes injury to health. It is also an emotional trauma for the people involved. They lose their feeling of ability to cope with society and they lose their sense of standing and prestige in the community and in the eyes of their children. The children acquire stigma from their fellow school mates, who often know that they leave because they can't pay their bills. The total result is low-income families very often must put up with sub-standard housing. The witness knows personally of one family of ten who had to split up with half the family living in one dwelling and half the family living in another.

The witness states that based on her housing commission studies, 75% of low-income families in Portland rent their homes. She visited and talked with the Lindseys and Snyder at Legal Aid's request. Lindsey told her that they had looked for another place for two years, but the vacancy rate is so loaded that they can't find anything.

The vacancy rate figures that the witness uses are based upon figures from the research department of Portland General Electric Company. She has seen these twice in the last two years. They show that there is a 2% vacancy rate in Portland for rental units. However, she estimates that only 1% of the rental units in Portland are cheap enough for low-income families to afford. She also states that low-income families often pay higher housing costs than middle-income families, due to high utility costs caused by poor heating, wiring, and plumbing. Of course, they also pay a higher percentage of their income for housing.

Low-income people usually are unable to rent middle income housing first because the landlord refuses to show it to them. The witness claims that there is generally something about the low-income families which causes the landlord to refuse to show them his available housing. Also, they can't get middle-income housing because

they can't pay the required one or two months advance rent.

The witness affirms that the Lindsey and Snyder residences are comparable to other low-income housing she has seen. It is low-income housing because of the income of the families involved. The Lindseys' residence is one of the worst she has seen for low-income families, which people are still living in. Assuming that the rent the Lindseys pay is $100 per month, the witness states that this is high for rental units available to most low-income families.

Based upon her experience in housing problems, the witness definitely thinks that eviction would cause the Lindseys irreparable harm. Eviction would be an additional blow, adding to their multiple problems and this would be true of all low-income families and not just the Lindseys.

It is a continuing downward and tightening spiral, which they would find an emotional and ego block to overcome. They give up hope. If they have health problems they now have more medical costs. They lose jobs and their children can't go to school. They get behind and this creates emotional problems and they give up hope. Any additional financial costs could break them. Then they can't afford to move. This is true not only of people such as the Lindseys, but of all low-income families.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

[Caption Omitted]

Portland, Oregon
9:30 a.m.

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS—
June 18, 1970

BEFORE:

The Honorable John F. Kilkenny, Judge of the United States Court of Appeals, 9th Circuit; The Honorable Gus J. Solomon, Judge of the United States District Court; and The Honorable Alfred T. Goodwin, Judge of the United States District Court, presiding.

APPEARANCES:

Messrs. John H. Clough, Kenneth J. Keller, Keith E. Tichenor and Joseph C. Morehead, Attorneys for Plantiff;

Messrs. Theodore B. Jensen, William A. Martin and Thomas J. Lekas, Attorneys for Defendants.

* * * *

[fol. 40] MR. JENSEN: Mr. Lekas wished to say something with regard to the relationship of Mrs. Normet and the plaintiff, what has been referred to as the landlord-tenant relationship. Plaintiffs did not, within the time permitted, say anything on that, but we would like to.

JUDGE GOODWIN: I think I made a finding of fact at the pretrial conference that it is the law of the case, as far as we are concerned now, that there was landlord-tenant relationship at the time this action was filed and I will hear you on it if you have something on the question of law, but I don't want to hear anything arguing about the facts.

* * * *

[Reporter's Certificate Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, KEITH L. OETTING, RANDALL LOWE, MARJORIE LOWE, PRINCESS THOMAS, MARIE DUNNE, BONNIE L. COLTON, and all other persons similarly situated, PLAINTIFFS

*vs.*

DOROTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah; ALL PERSONS SIMILARLY SITUATED HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH, DEFENDANTS

OPINION—September 10, 1970

Before: KILKENNY, Circuit Judge, and SOLOMON and GOODWIN, District Judges.

GOODWIN, District Judge:

This class action was brought to enjoin the enforcement in state courts of Oregon's Forcible Entry and Wrongful Detainer Law (ORS 105.105 to 105.160). Because plaintiffs assert unconstitutionality and demand an injunction, a three-judge court was convened under 28 U.S.C. § 2281.

The plaintiffs are tenants who, because of their poverty, are unable to obtain housing except in rental units that for various reasons are not satisfactory to them. After protesting the condition of their housing, some of the plaintiffs began to withhold the payment of rent. When the landlords commenced statutory proceedings to collect the rent or to evict the tenants, the plaintiffs sued to enjoin the evictions and to have the state laws declared unconstitutional.

All material facts are stipulated. For the purposes of testing the constitutionality of ORS 105.105 et seq., it is not necessary to decide whether the tenants' grievances are well founded. We will assume that one or more may be. It is agreed that the plaintiffs have protested and have not paid to their landlords the rent required under the terms of their rental agreements. During the pendency of this action, the rent has been paid into escrow pursuant to a conditional order restraining evictions.

It is conceded that Oregon law makes no provision for the withholding of rent as a means by which an aggrieved tenant may bring economic pressure to encourage a landlord to perform his obligations under the rental agreement. The state Legislative Assembly could institutionalize "rent strikes" if it desired to do so, but it has not enacted such legislation. See *Rent Withholding and the Improvement of Substandard Housing*, 53 Calif. L. Rev. 304 (1965). The plaintiffs argue that, in the absence of remedial legislation, this court should create a comparable remedy.

A threshold inquiry concerns abstention. Unless this is a proper case for the intervention of a federal court, this court ought to stay its hand.

We have examined rent-law decisions from other three-judge courts in which abstention was practiced, and we have examined the authorities cited on both sides of the question in this case. We have concluded that we should not abstain.

The challenged statute is clear. It is unlikely that an application of state law would change the posture of the federal constitutional issues. No state administrative process is involved. The case has been thoroughly briefed and argued on the merits, and is presented on a clear and complete record. It is ripe for decision. Only one appeal (to the United States Supreme Court) will now be needed to settle the federal constitutional question. While the state courts are also capable of applying the United States Constitution to a challenged state law, two levels of appeal would be needed in an F.E.D. case within the state system. A final state-court decision would still not necessarily settle the federal constitutional question.

Closely related to the time element is economy. Cases of this sort tax both courts and counsel. Until finally resolved, these cases produce expense, uncertainty, and frustration. Delay produces no balancing benefit, either of comity or of clarity in state-federal relations. We are advised that similar cases are now pending or ready for filing in the courts of Oregon. The interests of justice will best be served by rendering a decision on the merits without further delay.

The plaintiffs attack ORS 105.105 to 105.160 on eight due-process and equal-protection grounds.

The thrust of the plaintiffs' combined attacks on the statutory scheme is that the loss of possession during litigation is basically unfair to the poor, because, as a practical matter, loss of possession makes illusory any legal redress for the evils of substandard housing.

The landlords argue that the judicial creation of a means for retention of possession *pendente lite* would put a tenant, once in possession, in a practical position to hold someone else's property rent-free while he argues in court about real or imaginary faults in the housing.

The question for decision is whether the competing policy choices involved in resolving this political-economic problem ought to be made in a legislative environment or in a court case between two sets of litigants.

A century ago the Oregon Legislative Assembly, presumably representing the people of the state, elected to place the possession of property in the hands of the property owner during litigation. It is not for this court to decide whether that choice was either wise or socially desirable. Our function is to decide whether that choice, in light of present federal constitutional standards, offends the Constitution of the United States.

If the Oregon statutory scheme is out of step with the supreme law of the land, then this court must strike down the statute. If not, the people of Oregon remain free to enforce existing law or to debate and enact any other constitutional housing legislation that commends itself to them.

Plaintiffs first assert that F.E.D. pleadings under ORS 105.125(3) and (4) do not satisfy the fundamental

notice requirements of due process as guaranteed by the Fourteenth Amendment to the United States Constitution. A companion assault on the pleading statute asserts that it denies F.E.D. defendants equal protection of the laws, because defendants are in greater need of information than are plaintiffs. Both contentions must fail unless the notice requirements are clearly unreasonable.

The pleadings required by the challenged statute are at least as informative as those required by the Federal Rules of Civil Procedure. While the state has not institutionalized the discovery procedures available under the Federal Rules, we do not find the notice requirements of ORS 105.125 to be unreasonably sparse in view of the nature of the typical F.E.D. case.

The adequacy of notice ought to be related functionally to the facts of the ordinary case. While there may be exceptional cases, the usual F.E.D. case is one in which the tenant, like a taxpayer, knows whether or not he has paid, how much he has paid, and, if he has not paid, why he does not think he should pay. Detailed notice in such cases tends to elevate form over substance. We hold that the notice requirements of the Oregon statute serve the purposes of procedural fairness.

The second ground of attack asserts that ORS 105.135 offends due process in providing an unreasonably short time in which a tenant must appear in court. We hold that the Legislative Assembly acted within its constitutional powers in requiring that F.E.D. cases be heard within four days, in light of the purposes of the statute and the practical considerations known to the Assembly when the statute was adopted. As noted above, a tenant knows in most cases whether or not he has paid his rent, and, if not, why not. The tenant would not be any the wiser if the law were to be rewritten to give him ten days' notice. We find nothing unconstitutional in the statutory time element.

A third attack asserts that ORS 105.140 violates due process because it requires tenants to post cash security for their rent as a condition prior to obtaining a continuance for a comprehensive defense to the F.E.D. ac-

tion. The tenants, being poor, say that upon occasion this condition might be impossible to satisfy and that it therefore discriminates against the poor. It is, however, not unreasonable to require that a person whose eviction is sought for nonpayment of rent post security for the rent if he wishes to litigate the duty to pay. The landowner may also need money. There is no constitutional requirement that the owner allow a tenant to remain upon his land while he disputes in court the terms of the rental agreement. The challenged law does not deny the tenant access to the courts if he wishes to sue for a breach of contract or for other damages to which he might be entitled in an action at law. The F.E.D. statutes merely deny the tenant the power to hold the property while he engages in such litigation.

The plaintiffs contend that not all eviction cases arise out of nonpayment of rent, and argue that a month-to-month tenant ought to have protection against arbitrary eviction. Tenants who desire protection against arbitrary eviction may obtain it by entering into written leases. ORS 93.010, 93.020. Again, we know of no constitutional requirement that a landowner, whose tenant has not chosen to enter into a lease, must allow the tenant to remain on his land while suing the landowner for such transgressions as noncompliance with housing codes. While it may be competent for the legislature to make such a provision a part of the law of landlord and tenant, no constitutional requirement demands it.

A fourth ground of attack asserts that ORS 105.145 and 105.150 offend both due process and equal protection of the laws because these sections deny a tenant the opportunity to raise in an F.E.D. proceeding defenses he might raise in law or equity in nonpossessory proceedings. At issue here is not the right to litigate substantive disputes in a court of law, but, again, the policy question of the right to possession of property while disputes related to the property work their way through the courts. The Oregon legislature has made the choice in favor of the owner as against a nonpaying tenant. We do not believe this choice is so clearly unreasonable as to render the statute unconstitutional. The law must put

someone in possession of property while legal disputes are resolved, and it is at least as reasonable to place an owner in possession of his land as it would be to place an avowedly hostile tenant in possession under circumstances that would leave the owner wholly unsecured in the event he should prevail in court.

The appeal provisions of the F.E.D. law (ORS 105.160) are challenged as unreasonably denying judicial review in violation of due process of law. This challenge presents perhaps the most difficult question in this case. The Oregon Supreme Court recently passed upon the same question, holding that the statute was not unconstitutional. *Scales* v. *Spencer*, 246 Or. 111, 424 P.2d 242 (1967). The statute provides that if a tenant ousted of possession in an F.E.D. proceeding desires to appeal to the Circuit Court he must post a bond for double the amount of rent that will accrue pending the appeal. To the contention that this statute singles out for discriminatory treatment the tenant of rental housing, the state court answered that, without a provision for some reasonable measure of liquidated damages (the doubled rent pending appeal), every ousted tenant would appeal, secure in the knowledge that he had nothing to lose thereby as rent would be payable in any event. We agree with the state court that the legislature had a rational basis for placing this type of appeal in a different category from other appeals in the state judicial system. The classification is not so unreasonable as to constitute a violation of the Fourteenth Amendment.

The remaining challenges of the statute are essentially similar to those discussed. Each picks out a section of the statutory scheme and asserts that it unconstitutionally discriminates against the poor because a rich person could remain in possession of the property and litigate with the landlord on more equal strategic footing than could a poor person after he has been dispossessed.

In fairness to the plaintiffs and their able counsel who presented this case, it must be acknowledged that the plaintiffs make a strong argument that the statute, as a whole, is more oppressive to the poor than a section-

by-section analysis of its parts will demonstrate. This may be true, but, even so, the point does not establish unconstitutionality.

Many laws dealing with essentially economic matters may be oppressive to the poor. Poverty itself is so oppressive that legislative bodies spend a vast amount of their time and energy attempting to alleviate its burdens.

One currently active subject for legislative reform, for example, is the problem of enforcing city building and housing codes for the benefit of the poor. Without legislation, the poor cannot enforce such codes by the direct and practical device of the rent strike. The plaintiffs have not put forward, however, a valid reason for the judiciary rather than the legislative branch of government to make whatever changes may be socially desirable.

For the reasons stated, we fail to perceive a violation of the United States Constitution in Oregon's statutory scheme for the eviction of nonpaying tenants. The political and economic questions presented by these plaintiffs are all questions that can be resolved by the processes of representative government. Such questions do not demand judicial solution at this time.

The defendants shall have judgment for their costs and disbursements. The Temporary Restraining Order is vacated and the escrow is ordered to distribute all rentals to the appropriate persons and close the escrow.

DATED this 10th day of September, 1970.

/s/ John F. Kilkenny
United States Circuit Judge

/s/ Gus J. Solomon
United States District Judge

/s/ Alfred T. Goodwin
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civ. No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, KEITH L. OETTING, RANDALL LOWE, MARJORIE LOWE, PRINCESS THOMAS, MARIE DUNNE, BONNIE L. COLTON, and all other persons similarly situated, PLAINTIFFS

*vs.*

DOROTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah; ALL PERSONS SIMILARLY SITUATED HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH, DEFENDANTS

JUDGMENT—Filed September 10, 1970

Before: KILKENNY, Circuit Judge, and SOLOMON and GOODWIN, District Judges.

Pursuant to the opinion by this Court rendered herein on this date, IT IS ORDERED AND ADJUDGED that the action herein be, and the same is hereby, dismissed.

DATED this 10th day of September, 1970.

/s/ John F. Kilkenny
Circuit Judge

/s/ Gus J. Solomon
District Judge

/s/ Alfred T. Goodwin
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil Action No. 70-8

[File Endorsement Omitted]

DONALD LINDSEY, EDNA LINDSEY, EVARET SNYDER, KEITH L. OETTING, RANDALL LOWE, MARJORIE LOWE, PRINCESS THOMAS, MARIE DUNNE, BONNIE L. COLTON, and all other persons similarly situated, PLAINTIFFS

*vs.*

DOROTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah; ALL PERSONS SIMILARLY SITUATED HOLDING OFFICE AS JUDGES OF THE DISTRICT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH, DEFENDANTS

NOTICE OF APPEAL—Filed September 14, 1970

Notice is hereby given that DONALD LINDSEY and EDNA LINDSEY and all other persons similarly situated, Plaintiffs above named, hereby appeal to the United States Supreme Court from the final opinion and judgment made and entered herein on September 10, 1970, which dismissed the within action and which granted judgment in favor of the Defendants for costs and disbursements and vacated the temporary restraining order and ordered distribution of all rentals.

Plaintiffs also appeal from the Order of the Honorable Alfred T. Goodwin of January 12, 1970, dismissing Defendants CLIFFORD N. CHRISTANSEN, individually and in his capacity as Director of the Bureau of Buildings of the City of Portland, Oregon, and CLARENCE C. CRANK, individually and in his capacity as Director of Building Inspections of the City of Portland, Oregon.

This appeal is taken pursuant to 28 U.S.C. § 1253.

LEGAL AID SERVICE

By: /s/ John H. Clough
JOHN H. CLOUGH, Esquire
Director,
Trial & Appellate Div.
Attorney for Plaintiffs

[Proof of Service (Omitted in Printing)]

SUPREME COURT OF THE UNITED STATES

No. 6158, October Term, 1970

DONALD LINDSEY, ET AL., APPELLANTS

*vs.*

DOROTHEA M. NORMET, ET AL.

ON CONSIDERATION of the motion of appellants for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be and the same is hereby, granted.

May 3, 1971

# SUPREME COURT OF THE UNITED STATES

## No. 6158, October Term, 1970

DONALD LINDSEY, ET AL., APPELLANTS

*v.*

DOROTHEA M. NORMET, ET AL.

APPEAL from the United States District Court for the District of Oregon.

The statement of jurisdiction in this case having been submitted and considered by this Court, probable jurisdiction is noted.

May 3, 1971

Mr. Justice Black agrees that probable jurisdiction should be noted for the reasons set forth in opinion in No. 5048.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 427800 714